SUPREME COURT, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1994

OPTIMAL DATA CORPORATION, PETITIONER

Vs.

UNITED STATES OF AMERICA, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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8 PP

QUESTION PRESENTED

Whether the lower court, US Court of Federal Claims (CFC) had erred, in denying Petitioner's Motion for Reopening the Claim pursuant to RCFC 60(b) with specific basis (b)(1), (2), (3), by Judge Hodges' Order, "There is no basis in the Rules of this Court for reopening the Claim. Plaintiff's motion is frivolous, and therefore DENIED". (Appx.A4,A5) Subsequently, Appeals Court For Federal Circuit scheduled for oral argument (waived) then still affirmed CFC's decision without opinion while restricting the decision as "not citable". (Appendix A1,A2,A3) Therefore, the question also presented is whether the Appellate Court's affirming of CFC's denial without opinion had erred. Such Court errors will evidently prove to be a deprivation of Optimal's reimbursement, constituting a tortious breach of this minority contract by the Government.

The ultimate question specifically for issue of Writ of Certiorari will be whether Petitioner can and will substantively establish the Tortious Breach of Contract and Conspiratory Discrimination by the Government against the crusading altruistic minority Contractor, Optimal Data Corporation. As a member of the State of Minnesota, the petitioner is adopting the Minnesota Restructured Constitution, Art. 2, Rights and Privileges, Sect.2, to the U.S. Constitution Amendments V and XIV (P.(ii), Citation of Law A (a),(c),(d)); also, the Civil Rights Act 1968, Clause 1 & 2; FTCA (Federal Tort Claim Act of 1946); and specifically the Small Business Act, 15 USC 637(a), P.L. 85-536 8(a).

CITATIONS OF LAW

U.S. Constitution, Court Rules, Contractural Clauses, Code Of Juditial Conduct, And Applicable Statutes

A. U.S. CONSTITTIONAL PROVISIONS INVOLVED:

(a) Amendment V: No person shall be held to answer for.., nor be deprived of life, liberty, or property, without due process of law;" (legal, judicial, and governmental fair play) "nor shall private property be taken for public use, without just compensation."

(b) Amendment VII: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved,..., than according to the rules of the common law."

(c) Amendment XIV Section I: "All persons born or naturalized in the United States,..., nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(d) STATE OF MINNESOTA CONSTITUTIONAL PROVISIONS INVOLVED:

State of Minnesota Restructured Constitution, Art. 2, Rights and Privileges, Sect. 2:

"No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.... "

B. RULES OF U.S. COURT OF FEDERAL CLAIMS, RCFC 60(b)(Rule Book p.27)

US CFC RULE 60. Relief from Judgment or Order

(a)Clerical Mistakes:...

(b)Mistakes: Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, whether denominated intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under subdivision (b) of this rule does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action or relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

C. SPECIAL CONTRACTUAL CLAUSES

Contractual Clauses: (i) 217. Interest on Contract Payment; (ii) 513. Auditor's Right of Inspection and Examination of Records; (iii) 172. Allowable Cost, Fixed Fee and Payment:

"(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government." NASA PR 7.203--4(a) 8.BCA Charter, 14 CFR 1209.103 Membership

D. CODE OF JUDICIAL CONDUCT, CANON 3, PART C, DISQUALIFICATION:

"(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as a lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(c) No member of the Board shall consider an appeal if he has participated in any aspect of the award or administration of a contract in dispute."

Commentary:

"... a judge, or hearing officer, formerly employed by a Governmental agency, however, should disqualify himself in a proceeding if his impartiality might reasonably be questioned because of such association."

E. APPLICABLE STATUTES

1. 41 U.S.C. S 321-22 Wunderlich Act
2. 28 U.S.C. S 1295(a)(3) (1966)
3. Small Business Act, 15 U.S.C. 637(a) 80 Stat.138 (May 2, 1966), P.L. 85-536, Sect. 8(a); SBA-SOP for 8(a) contracting
4. Title 42 USC 1983 re the Civil Rights Act of 1964
5. Equal Access to Justice Act, PUBL 96-481

PARTIES TO THE PROCEEDINGS

Appellant - Optimal Data Corp. and its officers, Dr. Lincoln Teng, CEO and Acting President; Dr. E. Bruce Lees, Residence Director in the state of Minnesota; Mr. Wade Franklin and Dr. Philip Wright, Managment Consultants; Mr. Nael B. Shamas, Ms. Y. Sue Teng, and Mr. Roy Campbell, Business Consultants. There is no parent company nor subsidiaries.

Defendant - U.S.A., NASA-Goddard Space Flight Center (GSFC), contracting agency, NAS 5-21491; Small Business Administration (SBA), prime contractor, SB-424-8(a)-73-C-225.

JURISDICTION STATEMENT

The statutory basis for jurisdiction: (1) the Wunderlich Act 41 USC S 321-22; (2) 28 USC S 1295 (a)(3)(1988); (3) Federal Law Section 8(a) Small Business Act, 15 USC S 637(A)(1988) (including SBA-SOP for 8(a) minority business contracting; (4) specifically pursuant to the Appls.Ct.Federal Circuit Order of June 6, 1994 with Information Sheet.

TABLE 1 - CITATIONS OF PRECEDENT CASES CATEGORIZED BY ISSUES

1. Re: COST OVERRUN & LOC NOTICE: (Optimal had cost underrun only LOC) noticed fund $510,000 vs. Cost $360,000) (Appx.B)

GENERAL ELECTRIC CO., Corp. V. U.S., U.S. Ct. CL. No.503-69, April 16, 1971.

2. Re: ADDITIONAL COST INCURRED UNDER CPFF WITH LOC (GE's Reason: lack of knowledge; Optimal claimed cost below adjudicated funds, with 'Supreme' Clause 172 (G))

GENERAL ELECTRIC CO., Corp. V. U.S., U.S. Ct. CL. No.370-67, July 16, 1969.

3. Re: DUE PROCESS: (Optimal not given even the simplest due process for resolving the dispute by GSFC's Minority Business Specialist with Price Analyst (NEV 1&2, Attp .1-2)

a. BALTIMORE CONTRACTORS, INC. V. U.S., 226 CL. Ct. 391, 643 F.2nd 729 (1981)

b. ICONO V. U.S., 6 Cl.Ct. 149, 32 CCF pp 72720 (1948)

c. LAKE TOOLS & STAMPING CO. V. U.S., 7 CL. Ct. 313, 32CCF parag.73,202 (1984). (Claims Court review is unfettered and free to decide legal issues unrestricted by Board determination.)

d. LESTER BROTHERS,INC. V. U.S., 151 Ct.Cl. pp 536 (1960)

e. ORDNANCE RESEARCH,INC. V. U.S., Ct.Cl. 609 F.2d 462 (1979)

f. RAYTHEON CO. V. U.S., 2 Ct.Cl. 763 (1983)

g. SCHNIP BLDG. CO. V. U.S., 227 Ct.CL.148, 45 F.2d 950 (1981). (Claims Court shall be able to make independent search for the factual findings of the Board as to whether they meet the statutory finality standards.)

4. Re: GOVERNMENT CONTROL OF CONTRACTOR - THE MOST SEVERE BREACH OF CONTRACT:

JOSEPH H. ROBERTS V. U.S. & GREAT AMERICAN INSURANCE CO., as the third party defendant, U.S. Ct. CL. No.17-61, March 18, 1966. (GSFC T.O. played C.O.'s role, excessive constraints on contract -- a severe Breach of Contract)

5. Re: DIRECT LABOR PAY FOR CONTRACT MANAGER, AND DCAA CANNOT DICTATE O/H RATE COMPUTATION METHOD (Optimal's Claim III applies:

Optimal's project director altruistically charged minimum wage of $2.25/hr. in 1975-1976)

SPACO, INC. ASBCA 6402, April 1961.

6. Re: BAD FAITH CONDUCT BY GOVERNMENT (NASA-BCA, GSFC's bad faith conduct proven, culminating to Conspiratory Discrimination against Optimal, the minority contractor crusadi[illegible]or altruistic managment.)(USC 42 § 1983,85)

U.S. Ct. CL. 1017 MILLER ACT 40 USCA.

7. Re: INTEREST PAYMENT

a. NEW YORK SHIP-BUILDING CO. V. U.S. ASBCA No. 16164, June 1976. (Interest for using Corporate Money)

b. RAMSEY, ET AL. V. U.S. No. 50010 U.S. Ct. Cl., December 1981.(Optimal has not received payment since 1976.)

8. Re: 8(a) MINORITY CONTRACTOR (Optimal, the crusading altruistic minority contractor)*(Civil Right Act, 1964)

FULLJLOVE ET AL v. KLUTMICK SECRETARY OF COMMERCE ET AL, No.78-1007,U.S. Supreme Court, 448 U.S. 100 S Ct 775R 1980 US.

9. Re: CONSTRUCTIVE CHANGE ORDER AND FORMAL CHANGE ORDER (Such an order should have been issued for Optimal's Claim V. for equitable adjustment to avoid a breach of contract)

a. JOSEPH BELL V. U.S., 186 Ct. CL. 189,404 2nd 975 (1968) 10 G.C. p.513. (A Formal Change Order should be issued to confirm Constructive Change Order)

b. SKIDMORE, OWLINGS & MERRILL, ASBCA B346, 1963 BCA parag. 3727, 5 G.C. parag. 524. (Formal/informal issuance of constructive change order)

c. LEN. CO. & ASOCS. V. U.S., 181 Ct. Cl. 29, 385 F. 2d 438 (1967), 8 G.C. parag. 428 (Constructive Change Order Form)

d. EFMC CORP., ASBCA 11927, 67-2 BCA parag. 6530. (Constructive Change Orders without requiring "authorize")

e. MAVERICK DIVERSIFIED, INC. NASA-BCA 874-19, 75-1 BCA parag. 11081. (An equivalent for 4 Constructive Change Orders)

10. Re: TORTIOUS BREACH OF CONTRACT(F.T.C.A. 1946)

a. Chain Belt Co. v. U.S. 1953 F.Supp.701,127 Ct.Cl.3S

* **Note**: In searching for the above cited cases, it was found that, as yet, Petitioner is the first and only case involving an 8(a) minority contract under the practice of altruistic management.

TABLE 2 ACRONYMS AND ABBREVIATIONS

AA=Appellant Affidavit
ACO=Adminis. Contracting Officer
Adju. or Adjud.=Adjudicated
AF=Appeal File
Afft=Affidavit Paragraph Title
Affp=Affidavit page #
Apls.Ct.Fed.= Appeals Court-Federal Circuit
App #=Appendix page #
Appl'ee=Appellee
Appx.=Appendix
Appls.Ct.=Appeals Court
ATS=Advanced Technology Satellite
Attp=Attachment Page
Addp=Addendum Page
BCA=Board of Contract Appeals
BFA=Brief for Appellant
BFAR = Brief for Appl. Recons.
CCD=Contract Cost Data Sheet
CFC=Court of Federal Claims
Cl.Ct. or CL.Ct.=Claims Ct.
CPA=Certified Public Accountant
C.O.=Contracting Officer
CPFF=Cost Plus Fixed Fee
CPIF=Cost Plus Incentive Fee
Cy =Calendar Year
DCAA=Defense Contract Audit Agency
Fed.Cir.=Federal Circuit
FOF=Findings of Fact
FRAPP=Fed.Rule of Appl.Procedure
FTCA=Federal Tort Claim Act
G/A or G&A=General & Administrative
Gov't=Government
GSFC=Goddard Space Flight Center
LOCC=Limitation of Cost Clause
MAP=Mandatory Attach. Page
Memo=Memorandum
Mod.=Modification
NASA=National Aeronautics and Space Administration
NEV=New Evidence
ODC=Optimal Data Corp.
Ofc=Office
Ofcr=Officer
O/H=Overhead
Optimal=Optimal Data Corp.
Opt. Br.=Optimal Brief
P. #=Page Number
PApp. #=Petition Appendix Page #
Parag.=Paragraph
PHCF=Prehearing Conf. File
PLT=Plaintiff
Proj.=Project
PWC=Petition for Writ of Certiorari
RApp=Respondent Appendix
RBFA=Reply Brief for Appellant
RBrief=Respondent Brief
RCFC=Rules Court of Federal Claims
SAF=Supplement Appeal File
SBA=Small Business Admin.
SB ACT=Small Business Act
SECT.=Section
SET=Systems in Education-Training, Inc.
SMB=Small Minority Business
SOW=Scope of Work
Supp.=Supplement (al)
Tab.=Tabulation
TFOF=Truthful Findings of Fact
T.O.=Technical Officer
T.O.C.=Table of Contents
USSC=United States Supreme Court

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SECT. 1. STATEMENT OF THE CASE

The case is brought before the U.S. Supreme Court for Petition for Writ of Certiorari from the June 6, 1994 Denial of Rehearing following the April 14, 1994 Order Without Opinion, (Appx. A1,A2,A3) by the Appeals Court for Federal Circuit in affirming the June 17, 1993 Judgment of the U.S. Court for Federal Claims (CFC). The CFC Judgment was based on Judge Hodges' Order in denial of Petitioner's Motion for Reopening the Claim Pursuant to RCFC 60(b). (Appx. A4,A5).

SECT.2 SPECIAL AND IMPORTANT REASONS

2.1 Errors of the Lower Court. US CFC: The lower Court, U.S. CFC erred in denying Petitioner's Motion for Reopening the Claim pursuant to RCFC 60(b), with specific basis (b)(1), (b)(2), (b)(3). Because the denial was based on Judge Hodges' dogmatic Order, "There is no basis in the rules of this court for reopening the claim. Plaintiff's motion is frivolous and therefore DENIED." (Appx. A4,A5) is extremely perverse to and irrespective of the substantive and specific basis in RCFC 60(b), (b)(1) Mistakes, (b)(2) Newly Discovered Evidence, and (b)(3) Fraud. Furthermore, the Motion set Ground 1, Substantiation of Reasons and Evidence for Basis (b)(2) Newly Discovered Evidence in NEV. 1-3.(Appx. N1,N2,N3), and also Ground 2. Substantiation of Reasons and Evidence for Basis (b)(3) Fraud. The evidence for the Government's bad faith conduct has culminated to Fraud Upon the Court, and Conspiratorial Discrimination against the altruistic minority contractor, Optimal as delineated in Sect. 2.3 & 2.4.

2.2 Errors of the Appellate Court The Appeals Court For Federal Circuit erred in affirming without opinion the CFC denial of the reopening of claim motion, (Appx. A1,A2,A3). The substantive and specific reasons and evidence are presented herein below:

(i) The Affirming Judgment Without Opinion in Defying the Court Edict for Full Consideration of All Issues: Under the court directive, petitioner elected to submit the case on the briefs without prejudice to full consideration of the issues, whereas the affirming judgment was entered without opinion at all, thereby evidenced the arbitrary decision under prejudice. Also, the case has been edicted uncitable by the Court, implying a veiling of manifest injustice and gross inequity (Appx. A1,A2,A3). (However, the BCA dual-functioned Judge Dicus' biased decision with proven misrepresentations, distortions, fallacious and capricious statements, and dramatic errors to suit his ill-intent of impeding Optimal's altruistic reimbursement, was published in the 1979 Commerce Clearance House, 13.624 in an effect of revealing the injustice and inequity in the realm of government contract.)

(ii) Violation of All Rules of the Rule 36 Governing the Affirmance Judgment Without Opinion.

(a) Rule 1. Re: "The Judgment of the Trial Court appealed from is based on findings that are not clearly erroneous." The truth is that the judgment of the Federal Claims Court appealed from is based on the prejudicially dogmatic order of Judge Hodges in denying Petitioner's Motion for reopening the Claim Pursuant to RCFC 60(b). Judge Hodges' order had ignored the very existence of RCFC 60(b), as the CFC Judge Hodges

ordered "There is no basis in the rules of this Court for reopening the claim." (Appx.A5)

(b) Rule 2: Re: "The evidence in support of a jury verdict is sufficient." The truth is that the subject case had been a total lack of due process, not even the simplest resolution recommended by GSFC's Minority Specialist Dr. Wolter with GSFC's Price Analyst, which could have saved those dramatic errors from being committed disgracefully by BCA Dual-functioned Judge Dicus and CFC Judge Hodges, as stated later in Sect. 2.4) In the prehearing, Judge Dicus was flanked by CFC Counsel Callan and BCA's Chairman Lees, showing off a triple-concert threat. Thus BCA hearing was waived; CFC's hearing suspended by Government motion without Optimal's consent. CFC Judge Gibson held tele-conference, noting both parties' willingness for settlement as urged (Appx.A6). Government attorney later reneged that 'willingness'. Judge Hodges took over the case, discussed with the dual-functioned BCA Judge Dicus, irregularly, without both parties attorneys' participation, impelling Dicus' self-serving denial of bias.

(c) Rule 3: Re: "Summary judgment, or judgment on the pleadings is supported by the record." The truth is that the record shows ample evidence in support of Optimal's Claim for Reimbursement of $152,644.00 (Appx. B), and for compensation for damages, caused by Government's bad faith conduct, shall be of the value of tens of million dollars, as estimated by Optimal's great potential of "A Highly Original Creative Team" for developing real-time software systems in 1975, as praised by T.O., Brandel (Appx. C).

(d) Rule 4: Re: "The decision of an administrative agency warrants affirmance under the standard of review in the statute authorizing the petition for review or (e)." The truth is that BCA's dual-functioned Judge Dicus' bias and other misconduct had culminated to conspiratorial discrimination against Optimal, the crusading altruistic minority contractor (NEV.1-3 in Appx. N1,N2,N3), involving GSFC Counsel Callan, and BCA Chairman, Lees, with Dicus prosecuting the victimizing denial of Optimal's Reimbursement, disregarding any NASA-BCA standard of review by the dual-functioned Judge Dicus in a collusion with attorneys Callan and Lees.

(e)Rule 5: Re: "A judgment or decision has been entered without an error of law; and an opinion would have no precedential value." The truth is that the Government committed many serious errors in contractual mistreatment with discriminatory funding as well as contractual illegal actions, in disallowing the simplest due process (Rule 1, p.2). Then, the dual-functioned Judge Dicus' biased denial of Optimal's reimbursement, and later defying Judge Gibson's Order urging a settlement (Appx. A6). Such actions had, in effect, victimized Optimal's business which shall be of a great potential in the high-tech software world. As for the precedent value for Writ of Certiorari toward equitable adjustment for the altruistic minority contractor, Optimal, it will be of historical significance, especially in today's greedy world with mounting fraud in our nation, and, in the awakening of New South Africa for the true liberty and equity.

(iii) The Points of Law and/or Fact Which the Court Had Overlooked Or Misapprehended, Pursuant to Rule 40 of Appeals Court for Federal Circuit are presented below:

PART A POINTS OF LAW

Petitioner solemnly presents all the Points of Law, with particularity that had been evidentially overlooked or misapprehended by the Court, from Citations of Law in parts (A), (B), (C), (D), and (E) pp.(ii-iv) and also (F), i.e. Table 1, pp.(v-vi) as edicted in Rule 40. They are namely, in the same order as that in the Citation pp.(ii-iv), as follows:

(A) U.S. Constitutional Provisions involved, (a) Amendment V and (c) Amendment XIV, especially (d) State of Minnesota Restructured Constitution, Art. 2, Rights and Privileges, Sect. 2, be adopted to Amendment V and XIV for Minnesota Corporations' protection.

(B) Rules of U.S. Court of Federal Claims, RCFC 60(b) (1), (2), (3) as specific basis for reopening claims in CFC.

(C) Contractual Clauses: (1) 217. Interest on Contract Payment: (2) 5.13. Auditor's Right of Inspection and Examination of Records; and (3) 172. Allowable Cost, Fixed Fee and Payment, (Especially 172(G) is the "Supreme Clause" for subject contract of CPFF type.)

(D) Code of Judicial Conduct, Canon 3, Part C. Disqualification "(1) Re: Judge's recusation, (a); (b); and (c) No member of the Board shall consider an appeal if he has participated in any aspect of the award or administration of a contract in dispute." (Specifically re. the dual-functioned Judge Dicus' violations of the Judicial Code.)

Commentary: "...a judge, or hearing officer, formerly employed by a Governmental agency, however, should disqualify himself in a proceeding if his impartiality might reasonably be questioned because of such association." (The dual-functioned BCA Dual-functioned Judge Dicus' prejudicial prosecution was premeditated by GSFC Counsel Callan, and collusively afore authorized and post facto concurred by BCA Chairman F.Lees in veiling Dicus' GSFC Counselship).

(E) Applicable statues which had been in disrespect in the whole proceedings are in the Citations pp.(ii-iv), especially concerning the Tortious Breach of Contract and Conspiratorial Discrimination against Optimal. (Sect. 2.3 & 2.4)

(F) Citations of Precedent Cases on all categories of issues, particularly Category 6, Re: Bad Faith Conduct by Government, Category 8, Re: 8(a) Minority Contractor, and Category 10, Re: Tortious Breach of Contract (pp.v-vi)

PART B MATERIAL FACTS

(1)Material Fact 1 The material facts that had been overlooked by the Court are focused on Optimal's reimbursement in an itemized Claims I-V, as exhibited in Appx. B-Summarization of Reimbursement due Optimal presented with substantive delineations, derivations, and evidential proofs referenced therein. Such an important tabulation, complete while simplified, self-explanatory, with specific references, had been totally ignored by the Government. In the long proceeding, the Government's tortuous disputes, delays, and denials had never raised specific question with respect to any element of this

comprehensive tabulation. In summation, Optimal's cost was $361,907 (with $152,644 unpaid) which was expended in support of subject project of three key scientists of the "highly original and creative team" for over two and one-half years - exemplifying an altruistic management of Government contracts. The total cost of $361,907 is corroborated by three approaches of derivation. The unpaid balance is substantiated as the total of (a) plus (c) $152,644 therein; whereas Appx. E3, exhibits $500,000 for the cost of Bell Aero's System which was replaced by Optimal's.

(2) Material Fact 2 The next material fact that had been overlooked shall be the superior performance of Optimal Project which is conclusively presented by T.O., Brandel's letter praising Optimal Project as a Highly Original and Creative Team, with a satisfactorily working real-time software system. Also, he admitted Government funding gaps and Optimal's overhead support for project progress, all caused by the difficulty from upper managers' blocking the fund for this minority contract, thus Brandel was compelled to discuss with the key person, Dr. VandeLinde for taking over the follow-on task - an effect of conflict of interest violation besides undermining of Optimal's business, even an open-bid for 8(a) contract follow-on tasks is prohibited by SBA-SOP. On the Contrary to T.O., Brandel's commending of this 8(a) study type minority contract, whereas the dual-functioned Judge Dicus disprized it as a service contract for repair software, ..." (Appx. C, et al); he also reworded "Respondent" for "supporting" personnel to deceitfully cover-up Brandel's misrepresentation in (FOF.21).

(3) Material Fact 3 The third material fact had been overlooked shall be the newly discovered evidence. NEV.1 & 2, (Appx. N1,N2) have evidentially proved the dual-functioned GSFC Counsel and BCA Dual-functioned Judge Dicus, grossly abused Judicial Codes (parag. (D), p.5). Then NEV.3, (Appx. N3), reveals DCAA's fraudulent report and illegal submission, in Optimal's behalf, of the erroneous and inequitable overhead rates without using CPA's books and coordination. All such misconduct had been advocated and/or reinforced by the dual-functioned Judge Dicus, and then further affirmed by Judge Hodges in behest of his colleague, the BCA dual-functioned Judge Dicus.

(4) Material Fact 4 Information for Special Attention consisting of the following documentary evidence.

1/ Prologue of Prologues (This is the earliest concrete proof that Dual-functioned Judge Dicus' persistently biased in denying Optimal's altruistic Claim, Appx.I).)

2/ Recapitulation of Funding Status for Optimal Reject 1973-75 (Appx. E1) An alternative approach of derivation for the Material Fact 1. Summarization of Reimbursement due Optimal, herein above, all converging to the same result. The Appellee never raised a question to any elements of such a comprehensive and simplified tabulation with all supporting documents referenced therein.

3/ Categorized Listing of Tasks Not-Yet Funded (Appx. E2, SAF 32B) This is substantive evidence for certain specific tasks performed while never funded, some such unfunded tasks were not even specified in the contract. Optimal's performance of some tasks was in response to T.O.'s verbal requests. In

particular, as depicted in Appx.E2, Categ.B, Task (i), the Optimal's Solo Symposium was treated as a 'crash program, falsely induced by Wishna's handwritten processing on form 533 for Task IA fund in vain (Appx.D2,D3), and by GSFC's priority funding commitment to Optimal, although reneged too. (Appx.F. et al)

4/ Project Budget & Progress Control Chart (Appx.F SAF.4) This chart is self-explanatory with evidence for GSFC's persistent fund lagging, devised task curtailment, while striving for Optimal's project progress while often times during funding gaps, compelling Optimal's overhead (O/H) support, later conspiratorially disputed the actual O/H cost (in Claim II).

5/ GSFC PLACE Project Funding Status 1971-78 (Appx. E3, SAF.32) Excessive discriminatory funding favoring big businesses, Bell Aero Systems and EG&G, while depressing Optimal outrageously; the Project fund for 1974-76 was even acquired by Optimal's solo symposium; GSFC reneged its commitment of priority funding to Optimal (Appx. E3).

6/ NASA-GSFC's Appeal File (AF.) Listing With Annotations (Appx. K, K-1 to K-5, AF. 1-55). Many of the File Tabs. substantiate specific facts which had been overlooked by the Court are described with annotations perspectively for ease in referencing. For instance, in particular, the Tabs 32, 35, 38-44 constitute evidence for excessively repetitive auditing on the 8(a) minority contract, a violation of Clause 153. Furthermore, there were basic violations in GSFC's submission of the Appeal File. THE MINUTES and REGISTERS of the two special meetings, on Optimal Contract were concealed. GSFC Counsel Callan and C.O., Chief Shorter are responsible

in veiling the evidence of Dicus's participation in the second meeting. (NEV.1&2, Appx.N1,N2). Also concealed are Optimal's CCD sheets which were submitted along with each voucher, as Optimal's unique and extraordinary cost reporting instrument in serving the control and pre-auditing of cost, and can even prevent cross-charge and/or fraudulent billing (Appx. M, SAF.9A). Such concealment from Appeal File is a violation of 36 Federal Register 20580.

7/ ODC Supplementary Appeal File (SAF) Listing and Annotations (SAF.1-32) Appx. J, J-1 to J-5) Similarly, all of the SAF. 1-32 substantiate specific facts which had been overlooked by NASA-BCA and the Court are described in the annotations respectively for ease in referencing. However, the most dramatic instances of fact will be presented with respect to their particular importance in Appendices, B, C, D1-D3, E1-E3, F, G, H, I, J, K, L, M.

In summation, the foregoing Sections 2.1 and 2.2 submitted the errors of lower courts with proofs specifically based on Court Rules, with respect to Points of Law and Material Facts, as edicted.

SECT.2.3 Government Tortious Breach of Contract Against Optimal, The Crusading Altruistic Minority Contractor

(a) Substantive Proofs of Reimbursement Due Optimal (Appx B, C, D, E, F)

(i) Proof 1 Summarization of Reimbursement Due Optimal (Appx.B). This document is comprehensive, self-explanatory, and complete with specific and timing derivations of the Progressing tasks - funding status for Phase I & II, including supporting evidence referenced therein. It is further supplemented by Appx. D1, GSFC T.O., Wishna's Task I-A & B Funding Adjudication, and, as well, by Appx. F Project Budget and Progress Control Chart on Phase II Tasks -- Real-time Software System Development. In summation, the Reimbursement Due Optimal is logically organized and itemized into (5) Claims I-V, of which each is stipulated with supporting evidence, totaling $137,018. In addition, a supplementary Claim for fees which were deprived by GSFC's false labeling of "overrun", amounting to $15,626, thus, totaling $152,644, due Optimal, since 1976. The total Optimal Project expenditure, including the amount already reimbursed $244,889, shall amount to $361,907, relative to $510,000 noticed GSFC in the September 1973 funding meeting, in a sharp comparison to the cost of $550,000 for Bell Aero's System which had been replaced by Optimal's System. This substantive Proof 1 depicted not only the Government tortious breach of this minority contract reimbursement, in substance, but also, displaying Optimal's exemplary Altruistic Management.

(ii) Proof 2 Recapitulation of Project Tasks Funds Status (Appx.E1). This document serves as an overview ledger of Project Tasks-Funds adjudicated, funded and the, unfunded major tasks in a specially devised tabulation, showing funding status, stage-by-stage, towards the right blocks, while progressing the tasks, from Phase I down to Phase II, and towards the Piece wise Mod. 2, 4, 5, 7, 8, enduring the torturous funding gaps by Optimal. The final results, Cost Adjudicated $361,756; Amount Funded, $220,072, and Amount Not-yet Funded $141,684, of which each confirms the items in Proof 1 respectively, especially corroborating the Reimbursement due Optimal in substance. (Optimal Cost $361,907, Optimal noticed $510,000 vs. Bell Aero's $550,000) (Appx.B,C, E).

(b) The Government Contractual Mistreatment of Optimal -- Culminating to a Massive Tortious Conspiracy Against the Crusading Altruistic Minority Contractor

(i) NASA-GSFC Contractual Mistreatment of Optimal

1/ In the Project Phase I, T.O., Wishna played the role of C.O. over-controlled the contract with unconscionable constraints, i.e., no travel per diem, low rates, temporary on-site operation, etc. GSFC mistreatments are: "curtailment scheme," in curtailing the adjudicated fund for a pre-requisite task which had to be performed to proceed the project, causing funding gaps, then labeled new task fund as "overrun" to deprive the fees, even delay/denial, using the LOC pretext when the task is mostly done on O/H support, all to the detriment of the disadvantaged minority contractor, lacking legal force (Appx.D1,D2; E1)

2/ T.O., Wishna, besides curtailing his adjudicated funds for Tasks IA, a pre-requisite task, he even deceitfully induced Optimal, by a pretended form 533 for processing IA fund (Appx.D2), to cram for the Solo Symposium to acquire funds for PLACE, while still in funding gap,. Under GSFC's priority funding commitment, Optimal Solo Symposium miraculously succeeded in acquiring good funds from Maritime and FAA, whereas GSFC reneged its commitment to Optimal and diverted the funds to other uses at the sacrifice of Optimal, (Appx.D3;E1,E2), possibly an illegal act.

3/ In Phase II, GSFC Curtailment Scheme reoccurred, causing funding gaps, Optimal compellingly used O/H to support the project, as T.O., Brandel acknowledged (Appx.C), whereas C.O., Higgins and Keefe disputed with excessively repetitive auditing (A.F.33, 35-44) while ignoring Optimal's extraordinary submissions of substantive documentary evidence (Appx.B,E1,E2,F) and the "Supreme Clause" on CPFF Contract Reimbursement (172(G)).

4/ In addition to coercing Optimal's performing of nonspecified tasks (Appx.E2), GSFC's unreasonable delays in processing of MODs.7&8, issued as late as April 1976, while denying other costs incurred over that period of 14 months earlier (AF.9, Appx.K-1)

5/ GSFC C.O. Chief Shorter, who concealed key evidence document, Minutes and Register of two meetings on Optimal Contract, Summer of 1975, to reveal Dicus' participation in that second meeting; and also, Optimal's CCD, which were submitted with each voucher, had been concealed, so as to veal the evidence of T.O.'s pre-audit of Optimal's cost report. Such

concealments constitute a violation of 36-Federal Register 20580.(Appx.M)

(ii) NASA-GSFC, DCAA and SBA Contractual Mistreatment of Optimal

1/ As delineated in NEV.3 (Appx.N3), on Contract Cost Account and Audit, DCAA concealed its own specific "instruction for separating O/H cost pools" (SAF.22A,B,C) and capriciously reneged auditor Haley's adjusted equitable O/H rate of 145.7%. DCAA Gallimore under GSFCs C.O., Higgins' conspiratorial persuasion to order Haley delaying his June 1975 audit report (SAF.28, Appx.J-4) to October 1975 to recompute the inequitable composite O/H rate without coordinating, nor utilizing cost data, with CPA, resulting in a grossly inequitable and erroneous O/H rate @ 50.2%, (error in putting O/H labor into direct labor base-denominator) even submitted that fraudulent audit report, far exceeding auditor's right to inspect and examine per clause 153, and violating the basic mandatory equability principle.

2/ In June 1975, GSFC C.O., Higgins deceitfully read a DCAA Note #1 to Dr. Teng "...DCAA determination" in lieu of the truthful "ACO determination," then refused Dr. Teng's request for verifying it. Later, Optimal obtained a copy from Attorney Lieblich proving Higgins' Lie Under The Sun, let alone his collusion with DCAA Gallimore.

3/ GSFC Resource Director Keefe, in negotiation meeting on Claim II, suggested in presence of attorney Lieblich, Optimal to reverse O/H charges to Direct Labor which, as CPA perceived, was GSFC Keefe's ill intent to betray Optimal to ruin. Mr. Keefe, having learned SBA designated Auditor,

SET's recommendation for reimbursing Optimal, wrote to SBA 8(a) program manager Scruggs to ignore SET and to dispute in behest of GSFC (Appx.H) -- a prejudgment conspiracy.

4/ O/H Computation can be in the single, composite rate for contracts of same operation, and must be in separate O/H for significantly different operations (e.g. on-site low O/H and off-site high O/H). Such O/H computations are not an inner part of the accounting system, as misconstrued by "superior knowledge" GSFC counsel and BCA Judge, in compelling the composite rate (a weighted average) severely inequitable while capriciously citing NASPR 15-203 on indirect cost, but dogmatically ignoring Optimal's Prologue III-A, B, C, on equability of cost.

In summation, the subsection (a) presented Proof 1 and Proof 2 which together substantiate Government tortious breach of this altruistic minority contract. (Appx. B,C,D,E,F). The subsection (b) submitted the specific acts of contractual mistreatment constituting conspiracy by the trio agencies, NASA-GSFC, and DCAA and SBA involving their officials, viz., Higgins and Keefe of GSFC with DCAA's Gallimore and Haley and SBA's Scruggs. Legally, GSFC;s Counsels, Callan and Dicus are responsible together with those officials for the liabilities. (Appx.G,H; A.F. 19-21, 45, in Appx. K; SAF.30 in Appx.J)

SECT. 2.4 The Government Contractual Legal Misconduct Against Optimal -- Culminating to An Intensive Conspiracy By Impeding the Crusading Altruistic Minority Contractor's Reimbursement

(a) The NASA-GSFC and BCA Contractual Legal Misconduct, Constitution Conspiracy Against Optimal

(i) GSFC Counsel Dicus repulsed the simplest Due Process resolution for Optimal's complaint then he became Dual-Functioned BCA Judge, even in hearing this appeal knowingly defying the Judicial Conduct Code. (NEV.1&2 Appx.N1 & N2).

(ii) In a concert among Attorneys Callan, Dicus and Lees, GSFC's denial has proven to be a conspiracy to impede the Minority Contractor's Reimbursement. Such a misconduct in BCA's biased decision was concurred by Chairman Lees by a veiling of Dicus' counselship, violating the Code of Judicial Conduct (p(vi)). CFC Judge Hodges knowingly aggravated such a violation by citing Chairman Lees' concurrence to the dual-functioned Judge Dicus' biased decision, while defying Judge Gibson's earlier order re: settlement.

(iii) In BCA Decision, dual-functioned Judge Dicus denied Claims I,II,III, & V, while capriciously remanding Claim IV which can only be a percentage of the denied Claim III (MAP.12.30)--as self evidenced subterfuge.

(iv) The BCA denial of Claim III evidenced the dual-functioned Judge Dicus' lack of justice conscience in denying a project key personnel's minimum wage @ $2.25 -- an unusual cruelty beyond violation of Civil Rights.

(v) Contrary to his pretentious promotion, Dicus callously asserted, Optimal's huge deficit on contract shall be out of business and ruled hardship is not a cause for relief (MAP.12,30, et.al) -- a self-evidenced cruelty, beyond conspiratorial discrimination against Optimal.

(vi) In FOF 58, Judge Dicus cited NASPR.15-203 for equability of indirect cost based on segregation, while insisting on the inequitable composite O/H of the on-site (low O/H) and off-site (high O/H)--totally perverse to NASPR, a self-exposed capricious act.

(b) Substantive Evidence of Judicial Misconduct Against Optimal by NASA-BCA's Dual-Functioned Judge Dicus and CFC Judge Hodges. (Appx.L-1 to L-5)

(i) BCA Decision Summary on Appeal For Reconsideration, Assertions 1.1 and 1.2 (Appx.L-1)

Re. 1.1: The judge misconstrued computation of O/H rate as an inner Part Accounting System. O/H computation can be composite (for contracts of same operation) and must be separate (for contracts of different operations). Such computations can be carried out when called for, not affecting Accounting System at all. The word 'pool' is semantics; Optimal's segregated cost codes facilitate separate O/H computation, assuring equability.

Re. 1.2: Besides Optimal's extraordinary submissions of cost under National Accounting Standard, Optimal presents specially devised CCD (Contract Cost Data) for C.O., T.O.'s pre-auditing.

(ii) BCA Decisions Key Note/Highlights, Assertions 1.3; 1.4:.1-4 (Appx.L-1)

Re: 1.3: GSFC Counsel and BCA Judge Dicus falsely attached accounting system 'change' while never raised a question to any element of Summarization Of Reimbursement Due Optimal (Appx. B) and Project Tasks Funding Status (Appx. E1, F, M, etc.). The dual-functioned Judge Dicus pretentiously claimed "...reviewed Appellant submissions ... on a finding-by-finding, page-by-page basis."

Re: 1.4.1: Same misconstruction as is 1.1.

Re: 1.4.2: LOC is Judge's pretext for Optimal had noticed $510,000 for the project as early as September, 1973.

Re: 1.4.3: Subject contract is cost plus fixed fees, (CPFF) without ceiling rate, besides the excessive O/H was expended to support the project in funding gaps.

Re: 1.4.4: Subject study project is praised by T.O., Brandel as "highly original creative team" with dedication, whereas the dual-functioned Judge disprized the project as service, repair, maintenance, etc. In fact, the Judge acted in the role of auditor still raising cost allowability, after auditor had disallowed interest cost $6,000 and contribution $34, even inquiring "no proposal for Phase II-main task" which was done by the creative team.

(iii) BCA Decision Findings of Fact (FOF) (Appx.L-2)

FOF.2: The Judge stated all contract clauses and provisions for pages, except the 'supreme clause' 172 for CPFF contract reimbursement. Then, even in preliminary note, only discussed paragraph (G), avoiding 172 to prevaricate his fallacious and illogical assertions to readers.

FOF.15: Re BCA Judge's comment on CPA's memo, "DCAA's Suggestion for Separating On-Site O/H from Off-Site Operations O/H Pool" (MAP.12,11):

(i) "In a letter to Dr. Teng dated Nov. 25, 1975, ODC's ACCOUNTANT, Mr. W. Thrailkill discussed a Post-Contract Award Conference with Mr. Walker."

Judge Dicus falsely called 'CPA W. THRAILKILL' "Optimal's Accountant" to prevaricate the CPA's legal authority in testimony.

(ii) "no mention is made of separate O/H pools, just the separation of O/H cost for identification."

Optimal, Based On Cost Data Identification Codes Developed its Computerized Segregated Accounting System. Judge's 'separation of cost for identification' is perverse to the only possible logic. Separate O/H pools is in the topic distinctly, the dual-functioned Judge accused 'no mention' of it. Besides, the semantics of pools is not of essence; whereas, segregation of cost in a systematic substance is mandatory.

FOF.18:

(i) Re "...DCAA's suggested use of a separate O/H pool, ... so as to develop an O/H rate, ... only to WFC prior to contract award, ..." (Map.12.12):

WFC contract was fixed rate and had only 15 days prior to commencing, therefore it is not logic nor timely for developing O/H rate as Judge asserted, ignoring the fact that O/H rate is fixed, allowing no development. DCAA's 'separate O/H' was upon contract award, but Judge illogically asserted "...only to WFC prior to contract award", when there was no on-site operations yet.

(ii) Re "...WFC contract was, ... single company-wide O/H rate based on a single company-wide pool...:

Single O/H rate is used by big contractors having many contracts of same operation and in same cost center; Judge Dicus imposed single O/H for Optimal, not even permitted. The on-site and off-site are of different operations, separate O/H is mandatorily required for equability (NASPR.15.203) regardless of Agency's or DCAA's instructions.

(iii) Re "...separate pool for WFC would result in, ...and O/H rate lower than 42.2%, ...a lower contract price..."

This is a disgraceful connivance by BCA Judge Dicus' ignorance of Service Contract Act of 1965, which requires fringe benefits of 35%, excluding training, travel, bonuses, etc. Optimal's proposed 47%, which was reduced to 42.2% causing deficit of $66,935, which DCAA used contract ceiling amount instead of actual revenue, without using CPA's cost data, reported an erroneous figure of deficit $8,000, also excluding the loss of contract fee, $30,000, with many other sacrifices.

(iv) Re "...Appellant, or its advisor, ...misunderstood DCAA's suggestion, ...no evidence ...ever advised, after WFC award, for separate O/H pool, or ...established ..."

DCAA's advice re O/H separation (App.48) is mandatory for equability. DCAA's instruction, "separate O/H, if WFC contract awarded", in WFC contract pre-award audit report while never issued to Optimal (a discriminatory treatment) and had been concealed until a search of DCAA File. Evidently, the uncovering of 'DCAA instruction' had prompted BCA's tortuous Judge-made issues.

(v) Re "...if Appellant misunderstood, ...no ...conduct ...on Respondent's part which would place responsibility ... upon Respondent"

High rate for high expense off-site, and low rate for low expense on-site must be separated equitably. A composite O/H rate is simply a weighted average of the various rates, evidentially inequitable. Appellant's "understanding" of separate O/H is as simple as "one cannot add apples and oranges." If Judge Dicus would accept the average pay of his salary and his denied direct labor of Optimal's Project Director's wage of $2.25 per hour or $375 per month, then Judge can realize the inequity.

FOF.21:

(i) Re "Mod.5, 1/6/75, ...an increase in SOW to include training of RESPONDENT'S PERSONNEL ..." (MAP.12.13):

The true contract specification is "The contractor shall provide Training at Rosman for SUPPORTING PERSONNEL..." (AF.3, SAF.23, Appx.J-2) wherein "supporting" was rewarded as 'respondent' by Judge to cover-up T.O., Brandel's misrepresentation.

(ii) Re " ...no supporting document...except CCD (Contract Cost Data) device and a chart, Tabulation of Contract Costs and Payments".

CCD is a summary of itemized cost (accounting standard DD633) incurred based on substantive supporting data and in a specific and detailed account to substantiate Vouchers. It is Optimal's extra-ordinarily devised unique cost reports instrument. (Appx.E3) It serves the control, monitoring, and pre-auditing of cost, and especially can prevent cross charges and/or fraudulent billing, if properly certified.

FOF 24:

"On June 19, 1975, Appellant submitted a letter asking for additional cost reimbursement...$8,233.31 for Voucher 33, (A.F.18) and $17,020.84 for "Voucher 34"...AF.19)" (Appx.K-2)

Only voucher 33 was found in A.F. 18 or any other file. No such 'voucher 34' can be found in A.F. 19. The dual-functioned Judge Dicus made up this non-existent 'voucher 34' to confound with the genuine Voucher 34 ($55,141 Claim II) in SAF 6, p.1 (Appx.J-1)

FOF 32:

Re (i) "Appellant established ...computation ...for O/H rate ...This is consistent with DCAA interpretation..." (MAP.12..14)

This O/H rate formula is universal and irrespective of DCAA's interpretation. ODC complied with, not 'ODC established' as Judge Dicus misconstrued.

Re (ii) "With respect to G&A, ...Appellant ...formula: G&A rate = G & A exp. / (direct labor + other direct cost + O/H cost). DCAA found this ...inconsistent with Appellant's accounting system in that O/H cost should not ...included in the base. Since this results in a higher G&A rate, and thus is to the benefit of Appellant. We accept DCAA ...appropriate calculation of G&A." (MAP.12.15)

1/ This G&A formula is also universal.

2/ Judge Dicus committed the most disgraceful mistake in asserting "O/H cost should not be included in the base. Since this results in a higher rats". Arithmetically, it shall result in a lower rate, not a higher rate as the Judge seriously erred, thus wrongfully condemned, "to the benefit of Appellant". On the contrary, Appellant established an altruistic G&A formula which excludes O/H cost from the base, yielding a relatively higher

rate, yet resulting in a lower cost for billing, upon verifying the comparisons.. Above all, ODC's altruistic management achieved a G&A surplus due government and refunded. G&A should not be at issue. Ergo, it must be under the pressure of prejudgment that Judge Dicus had to commit such multifariously fallacious errors to impede the altruistic minority contractor. Such malevolent errors were advocated by CFC Judge Hodges.

(iv) CFC Judge Hodges' Opinion in Aggravating Judicial Misconduct (Appx.L-5)

Re: 2.0 1/ Differing from Judge Gibson's teleconference with both parties' counsels, Judge Hodges privately inquired of Dicus' bias in BCA decision, deliberately impelling Dicus' self-serving denial. However, Judge Hodges, knowing Dicus' dual-function in conflict-of-interest and violation of Code of Judicial Conduct, still cited BCA Chairman Lees' concurrence to Dicus' biased decision by evading Dicus' counselship appointed by Lees, himself. (MAP.12.5)

2/ In US CFC, the Latter Judge Hodges, Jr. had capriciously defied the former Judge Gibson's order for urging a settlement (Appx.A6) and the CFC's General Note No. 13, Alternative Dispute Resolution Techniques.

3/ Basically, GSFC Counsel Callan and BCA dual-functioned Judge Dicus predetermined the denial of Optimal's reimbursement; by feigning the confusion of fixed rate vs. fixed price contracts, on-site service contract (low O/H) vs. off-site study contract, (high O/H), single O/H rate vs. ceiling O/H rate, then composite O/H rate (on contracts of same operation) vs. separate O/H rate for different operations to preserve equability

of O/H cost on the contract (NASPR 15-203; Appx.L-1; Appx.N3)

Re: 2.1 to 2.2: CFC Judge Hodges advocated the most dramatic cost accounting error in asserting inclusion of O/H in the base (denominator) will increase the rate to Appellant benefit while under the Animus of Prejudgment. On top of Dicus' compounded error, Judge Hodges misconstrued inclusion of O/H in the formula as inclusion in the billing, thus, wrongfully accused "O/H recovered" twice. Besides, G&A is not at issue, as presented in the precedent section 2.4 (b) (iii) on FOF.32; similarly on FOF.18 (Appx.L-5).

Re. 2.3 to 2.4: Judge Hodges even quoted Optimal's 1973 notice for $15,000 for three-year period, i.e. a total of $510,000 by counting $10,000 for the first six-month period, while still raised LOC issue. As for the Judge Dicus' connived, capriciously, remanding Claim IV (which can only be a % of Claim III already denied).

Re. 2.5 and 2.6: All the Appendices, Appx. A, B, through N1,N2,N3 were submitted to BCA even with issue-categorized precedent cases. As for Conclusion of Law, Re. Clause 172(G), Judge Dicus' accused Plaintiff of "a blank check" claim, by disregarding all cost reports, especially CCD, and T.O., Brandels' commending of the project, "highly original creative team."

In summation, the foregoing presentation of Contract Legal Misconduct Acts by NASA-GSFC and BCA evidently constitute conspiracy and liability therefor. The GSFC's prejudicially organized Discriminatory Funding against the Optimal's minority study contract is delineated in the GSFC

PLACE Project Funding Status, 1971-78 (Appx. E3) and the unfunded tasks performed by Optimal under coercion is depicted in Categorized Listing of Tasks Not-Yet Funded (Appx.E2). The Tortious Conspiracy between GSFC and BCA is intimately intrinsic, especially in this case, wherefor the Hearing Judge Dicus had been the dual-functioned GSFC Counsel and BCA Judge whose immoral acts can also be cause for the Tortious Conspiracy. Specifically, Attorneys Callan, Dicus, and Lees, and NASA Chief Counsel Hartman are all responsible for such a Civil Conspiracy in asserting the vicarious, or joint and several liabilities upon the above named trio of attorneys and the chief counsel.

SECT. 3 SUMMARIZATION AND CONCLUSION

3.1 Special Application of Federal Statues for Tortious Conspiracy and Discrimination Against Optimal, the crusading altruistic minority contractor

(a) Special Notes of Application of Federal Statues for Tortious Conspiracy and Discrimination

(i) Re: 28 USC § 1346 Note 183. Tortious Breach "...if tort complained of is based entirely upon government's breach of promise, claim is in substance a breach of contract claim, ... U.S. v. Smith, C.A. (In 1963, 321 F.2d622." "...an action may be maintained in Court of Claims which arises primarily from a contractual undertaking, regardless of fact that loss resulted from negligent manner in which defendant performed its contract. Chain Belt Co. v. U.S., 1953, 115, F. Supp. 701,127 Ct.Cl.38"

(ii) Re: Note 184. Implied Contracts "It was incumbent upon government contracting officer to investigate or correct faulty contract designs and issue change orders were appropriate, ...there would be a breach of ever-present obligation to carry out its end of Implied Contractual bargain and not to impede contractor's progress. Banks Const. Co. v. U.S., 1966, 361 F.2d 357,176 Ct.Cl.1302.

(iii) Re: TORT OF CLAIMS ACT "....THE FEDERAL ACT, CALLED THE federal tort claims act (F.T.C.A.), passed in 1946, confers exclusive jurisdiction on United Stated District Courts to hear claims against the United States...("TORT: "...breach of a legal duty that exists by virtue of society's expectations.)

(iv) Re: 42 USCA § 1983: "Claims must allege both conspiracy and actual deprivation of constitutionally protected interest (e.g. Optimal's reimbursement denied and its business victimized by tortious conspiracy.

(v) Re: 42 USCA § 1985: "To be actionable under Civil Rights Conspiracy Statute, conspiracy must result in overt acts done in furtherance of conspiracy that are both cause in fact and proximate cause of plaintiff injury"

3.1(b) Applicable Federal Statutes for Tortious Conspiracy and Discrimination

	Statutes / Acts of Conspiracy	42 USCA § 1983 Amendment 5,14	42 USCA § 1985	42 USCA § 3601	Civil Rights Act 1968	18 USCA § 241	18 USCA § 1934	18 USCA § 2512	SB Act 15 USC 637(a) P.L. 85-356	FTCA-1946	Effects
		1	2	3	4	5	6	7	8	9	
A	Injure in Property or Business	√ Av1	√ Av2					√ Av8		√ Av9	Tortious Conspiracy, (immoral acts can be cause)
B	Defraud in General						√ Bv6				Tortious Breach of Contract Proof of intent to conspire
C	Interfere with Civil Rights	√ Cv2	√ Cv2	√ Cv3	√ Cv4		√ Cv6		√ Cv8	√ Cv9	Conspiratorial Discrimination
D	Deprive U.S. Citizen of Constitutional Rights	√ Dv1				√ Dv5		√ Dv7			Conspiratorial Discrimination
E	Abridge Rights and Privileges			√ Ev3	√ Ev4	√ Ev5					Civil Conspiracy (Asserting vicarious or joint and several liabilities)

(b) Applicable Federal Statues for Tortious Conspiracy and Discrimination -- A Chart

3.2 Material Evidence of the Unique Virtues of Optimal's Crusading Altruistic Minority Contract Management -- as delineated in the following documents.

AppendixA6 CFC Judge Gibson's Order, Re:Settlement
Appendix C. GSFC, T.O., Brandel's Letter to C.O., Higgins Re: Optimal Project Performance(SAF 19)
AppendixD3 Optimal's Sole Symposium Agenda (SAF.3B)
AppendixE1 Recapitulation of Project Tasks-Funding Status 1973-75 (SAF.32A)
AppendixE2 Categorized Listing of Tasks Not-Yet Funded (SAF.32B)
AppendixE3 GSFC PLACE Project Funding Status 1971-78 (SAF.32C)
Appendix I Optimal's Prologue of Prologues -- A Compendium (Especially the Prologue I-C, II-C and III-A,B,C)
Appendix L Excerpts of BCA's Dual-Functioned Judge Dicus Decision and CFC Judge Hodges Opinion (Especially regarding Optimal's altruistic computation formula for G&A in BCA decision FOF 32.
Appendix M,Optimal Contract Cost Data (CCD)-A Unique Cost Reporting Instrument
Appendix N3 Memorandum by CPA, W. Thrailkill

Petitioner's Continued Pledge -- In previous pleadings, petitioner had pledged to challenge the government to make special investigation and examination of all contract costs to discover any pretense or falsities in Optimal's self-proclaimed altruistic management, instead of making the offensive irrelevant issues with dramatic judicial errors, to dismiss the case, provided the Government will allow equitable adjustment to Optimal's extraordinary contractual effort based on the substantiated goverment contractual mistreatment and legal misconduct. (Appx.A1,A2,A4,A5,C,D2,D3,E2,E3,G,H,I,N3)

3.3 PETITIONER'S PRAYER

Wherefore, Petitioner, in the foregoing pleading of Special and Important Reasons, has presented substantial proofs of Government Tortious Breach of Contract by Tortious Conspiracy and Discrimination against the crusading altruistic minority contractor, Optimal Data Corporation, prayerfully petitioning for Writ of Certiorari to Appeals Court for Federal Circuit issue and that the Court decision be reversed, leading to an ultimate relief of these Tort and Civil Right Claims.

As a member of the State of Minnesota, the petitioner is adopting the Minnesota Restructured Constitution, Art. 2, Rights and Privileges, Sect. 2, to the U.S. Constitution Amendment V and Amendment XIV; and the Federal Statutes applicable, the Civil Right Act of 1964 and 1968, Clause 1 and 2; also the Federal Tort Claim Act (FTCA) of 1946; and specifically for the protection of this 8(a) minority contract, the Small Business Act, 15 USC 637(a), P.L. 85-536 8(a). Especially in consideration of the crusading altruistic minority contractor having been mistreated by the Government Tortious Conspiracy and Discrimination, Honorable Court's Grant of Writ shall be of a land-mark historical significance, particularly, in the recognition of the awakening New South Africa.

Signed

Chris J. Christie, Esquire
Counsel for Petitioner,
Optimal Data Corporation

LIST OF APPENDICES

APPENDIX	TITLE/DESCRIPTION	PGID
Appendix A, Lower Court Edicts		
A1	Appls Ct June 6, 1994 Denial of Rehearing	Appx.A1
A2	Appls Ct April 14, 1994 Judgment	Appx.A2
A3	Appls Ct Information Notice	Appx.A3
A4	U.S. CFC Judgment	Appx.A4
A5	U.S. CFC Order by Judge Hodges	Appx.A5
A6	CFC Judge Gibson's Order, Re: Settlement	Appx.A6
Appendix B, Summarization of Reimbursement Due Optimal (SAF.2-6,10,12,et al)		Appx.B
Appendix C, GSFC, T.O., Brandel's Letter to C.O., Higgins Re: Optimal Project Performance(SAF 19)		Appx.C
Appendix D, Project Phase I Tasks - Funds Adjudications		
D1	GSFC T.O., Wishna's Confirming Task I-A & B Funding Adjudications (SAF.2)	Appx.D1
D2	GSFC T.O. Wishna's handwritten Re-adjudication for Task I-A Cost in Man Hours (SAF.3A)	Appx.D2
D3	Optimal's Sole Symposium Agenda (SAF.3B)	Appx.D3
Appendix E, Project Funding Status 1973-75		
E1	Recapitulation of Project Tasks-Funding Status 1973-75 (SAF.32A)	Appx.E1
E2	Categorized Listing of Tasks Not-Yet Funded (SAF.32B)	Appx.E2
E3	GSFC PLACE Project Funding Status 1971-78 (SAF.32C)	Appx.E3
Appendix F, Project Budget and Progress Control Chart Phase II--Real-time Software System Development (SAF.4)		Appx.F-1 to F-2
Appendix G		
GSFC C.O., Gentilini Letter Rejecting Optimal's Proposal for the Follow-on Task of Its Own 8(a) Contract (The Open-bid was not permissible per SBA-SOP) (SAF.20)		Appx.G

Appendix H, Extract of GSFC-SBA correspondence:
Part 1, by C.O., Higgins to SBA funding assistance in vain (A.F.20-21); Higgins request of DCAA Gallimore for recomputing O/H in a composite rate, (A.F.19, Appx.K)
Part 2, By Resources Manager, Keefe, requesting for SBA, (Prime Contractor) to make his predetermined dispute in favor of GSFC against Optimal (subcontractor) by defying SBA's designated auditor, SET's fair recommendation for reimbursement.(A.F.50,SAF.30) Appx.H

Appendix I Optimal's Prologue of Prologues -- A Compendium Appx.I

Appendix J Optimal's Supplementary Appeal File (SAF) Listing with Annotation Appx.J-1 to J-5

Appendix K NASA-GSFC's Appeal File (A.F.) Listing with Annotations Appx.K-1 to K-5

Appendix L Excerpts of BCA's Dual-Functioned Judge Dicus Decision and CFC Judge Hodges' Opinion Appx.L-1 to L-6

Appendix M, Optimal Contract Cost Data (CCD)-A Unique Cost Reporting Instrument Appx.M-1

Appendix N, Newly Discovered Evidence, ENV.1-3
N1 Affidavit by Dr. A. Wolter Appx.N1
N2 Affidavit by Dr. A. Wolter (addendum) Appx.N2
N3 Memorandum by CPA, W. Thrailkill Appx.N3

Special Note: Reuse of Appendices: The Appendix Indices Appx.A1, ..., A6; Appx.B, Appx.C; Appx.D1, D2, D3; Appx. E1, E2, E3; Appx. G; etc., do also indentify their page distinctly . For the multi-page Appendices, then use Appx. F-1 & Appx.F-2 for the two pages, similarly for Appx. J-1 to J-5; etc. Certain file or page identifications, such as A.F.#, SAF. #, MAP.#, and App.# are used in Appeal's Addendum or Appendix, respectively stored in CFC Clerk's Office permanently.

APPENDIX A1
United States Court of Appeals for the Federal Circuit

ORDER

Before NEWMAN, Circuit Judge, PLAGER, Circuit Judge, and CLEVENGER, Circuit Judge.

A petition for rehearing having been filed by the APPELLANT, UPON CONSIDERATION THEREOF, it is ORDERED that the petition for rehearing be, and the same hereby is, DENIED.

The mandate has already issued.

FOR THE COURT,
FRANCIS X. GINDHART, CLERK

Dated: June 6, 1994

by _____
Diane M. Frye
Chief Deputy Clerk

cc: CHRIST J. CHRISTIE
JOSEPH A. KIJEWSKI

OPTIMAL DATA CORP V US, 93-5186
(CFC - 760-85C)

Filed
U.S. Court of Appeals for
The Federal Court
June 6, 1994
Francis X. Gindhart, Clerk

APPENDIX A2
NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

United States Court of Appeals for the Federal Circuit

93-5186

OPTIMAL DATA CORPORATION,
Plaintiff-Appellant,
v.
THE UNITED STATED,
Defendant-Appellee.

JUDGMENT

ON APPEAL from the United States Court of Federal Claims

in CASE NO(S). 760-85C

this CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

AFFIRMED See Fed. Cir. R. 36.

Per Curiam (NEWMAN, PLAGER, and CLEVENGER, Circuit Judges).

ENTERED BY ORDER OF THE COURT

DATED April 14, 1994

Francis X. Gindhart, Clerk

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT
APRIL 14, 1994
FRANCIS X. GINDART, CLERK

APPENDIX A3

United States Court of Appeals for the Federal Circuit

NOTICE OF ENTRY OF
JUDGMENT WITHOUT OPINION

JUDGMENT ENTERED: April 14, 1994

The judgment of the court in your case was entered today pursuant to Rule 36. This Court affirmed the judgment or decision that was appealed. None of the relief sought in the appeal was granted. No opinion accompanied the judgment. The mandate will be issued in due course.

Costs are taxed against the Appellant(s) in favor of the Appellee(s) under Rule 39. The party entitled to costs is provided a bill of costs form and an instruction sheet with this notice.

The parties are encouraged to stipulate to the costs. A bill of costs will be presumed correct in the absence of a timely filed objection.

Costs are payable to the party awarded its costs. If costs are awarded to the government, they should be paid to the Treasurer of the United Stated. Payment should be made to counsel for the party awarded costs or, if the party is not represented by counsel, to the party pro se. Payment of costs should not be sent to the court. Costs should be paid promptly.

Exhibits and visual aids shall be promptly retrieved by the party that lodged them with this court.

FRANCIS X. GINDHART
Clerk

cc: CHRIS J. CHRISTIE
JOSEPH A. KIJEWSKI

OPTIMAL DATA CORP V US, 93-5186
(CFC - 760-85C)

APPENDIX A4

In The United States Court of Federal Claims

* * * * * * *

OPTIMAL DATA CORPORATION, *

Plaintiff *

v. *

UNITED STATES OF AMERICA, *

Defendant *

No. 760-85C

Filed: June 11, 1993

* * * * * *

ORDER

Plaintiff's motion for reopening the claim is written in the same inappropriate, unprofessional style as the earlier pleadings, and it includes at least one assertion that the court knows to be untrue. This leads us to suspect that all of the pleadings have been drafted by someone other than the attorneys whose names appear thereon. Plaintiff's motion for substitution of counsel is DENIED.

There is no basis in the Rules of this court for reopening the claim. Plaintiff's motion is frivolous, and therefore DENIED.

Robert H. Hodges, Jr.
Judge

JUDGMENT

APPENDIX A5

United States Court of Appeals for the Federal Claims

No. 760-85C

OPTIMAL DATA CORPORATION,

V.

THE UNITED STATES

Judgment
filed
June 17, 1993

Pursuant to the court's order of June 11, 1993,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that the plaintiff's motion for reopening the claim, pursuant to RCFC 60(b) motion, is denied.

David A. Lampen
Clerk of Court

June 17, 1993 By:

Deputy Clerk

NOTE: As to appeal, 60 days from this date, see RCFC 72, re number of copies and listing of all palintiffs. Filing fee is $105.00.

APPENDIX A6

IN THE UNITED STATES CLAIMS COURT
NO. 760-85C

(Filed: November 20, 1987

OPTIMAL DATA CORPORATION
V.
THE UNITED STATES

ORDER

The court held a telephonic status conference on November 19, 1987, in the above-captioned matter to ascertain whether the parties had exhausted all means of settlement. To date, the parties reported that they have had no settlement discussions. Nevertheless, both parties are willing to engage in settlement discussions with a view towards amicably resolving the issues.

THEREFORE, IT IS HEREBY ORDER that all proceedings shall be stayed for 30 days from the due date of defendant's reply brief (December 31, 1987), i.e., to and including February 1, 1988, to provide the parties with an opportunity to reach settlement. If disposition has not been accomplished by February 1, 1988, the parties shall file with the court at that time a status report as to settlement progress. Defendant must timely file its reply brief notwithstanding the stay.

IT IS SO ORDERED.

Reginald W. Gibson, Judge

APPENDIX B

SUMMARIZATION OF REIMBURSEMENT DUE OPTIMAL

CLAIM I: Balance of Voucher 33B GSFC's non-provisional O/H rate		$ 467
CLAIM II: Voucher 34 for 1973-74 O/H due Optimal (Less G&A due Government)		$ 55,141
CLAIM III: Vouchers 35 & 37, Direct labor/other direct cost for 1975 and 1976		$ 32,489
CLAIM IV: Voucher 36 for 1975 indirect cost		$ 30,892
CLAIM V: (GSFC Form 533 & T.O.'s adjudication (SAF 2&3) (T.O. reduced from adjudicated fund of $24,600 for Task IA)		$ 18,029
TOTAL ITEMIZED COST REIMBURSEMENT DUE OPTIMAL:		(a) $137,018
Amount Reimbursed (SAF 32A)		(b) $224,889

Total Cost Approaches A,B,C:		
Approach A (Sum of (a) & (b))		$361,907
Approach B Recapitulation of Project Tasks-Funding Status, 1973-75 (Appx.E1)		$361,750
Approach C Total Adjudicated Funds (Appx.D1,D2,F)		$358,537
LOC Noticed Fund ($10,000 X 6+$15,000 X 30) (Sep. 1973 funding meeting (MAP.10)		$510,000
Supplementary Claim for Fees (deprived by false labeling of "overrun")*	(c)	$ 15,626*
Total Claim Reimbursement & Fees: (a)+(c)		$152,644**

NOTE: The 3-Approach derivations (A,B,C) converge to approximately the same amount. $361,907 in support of the "highly original creative team" of three scientists over two and one half years, an unbelievably altruistic cost, still leaving $152,644 not yet reimbursed, in claim.

* Total Cost $361,907 x 7.8% fee (App.10) = $28,227 (total fee), Less $12,601 fee paid (AF.5, MOD.4)) = $15,626.

** Clause 217 (Re: Interest Payment, Aug. 1972), Precedent Cases: Category 7 p.(viii).

APPENDIX C (AF 17; SAF 19, APP.40-44)
EXCERPT-T.O., BRANDEL'S LETTER TO C.O., HIGGINS
April 30, 1975 (annotations underlined)
SUBJECT: Response to the Optimal Data Corporation (ODC) letter dated March 19, 1975, Contract NAS5-21941

"Before responding to the letter from Dr. Teng, I would like to express my satisfaction with the technical performance of ODC under this contract. Despite the hardships imposed on ODC...Dr. Teng succeeded in assembling a highly original and creative team headed by Dr. Vandelinde...Dr. Samant, Dr. Loh, and Jeff Rothman are to be commended for their DEDICATION, HARD WORK, and PERSISTENCE...."

"ODC felt penalized by the delays which occurred in the contract funding and by the need to put their personnel on O/H. Unfortunately, for the previously described instance in July 1974, no other course was available to the Government. Dr. Teng had been unable, throughout the entire contract, to provide cost estimates ..." (Optimal gave notice of $510,000 Sept. 1973 Funding Meeting.)

"...The second trip was set up to conduct..." (Actually, T. O. Brandel called for this trip to get himself trained in a misrepresentation for a station personnel. The dual-functioned Judge Dicus reworded "Respondent" for "Station" personnel to cover-up this misrepresentation).

"...On this trip, Dr. Vandelinde asked if there would be further work for ODC...I indicated the **remaining effort would involve a competitive procurement** (8(a) Contract follow-on work is not allowed to open bid per SBA SOP)...provide repairs to the present routines (implying need of his expertise). "He informed me that he had formed his own company ..." (Dr. Teng joined Drs. Samant and Loh to urge for Dr. VanderLinde's takeover to keep the team together, while not materialized.)

"In summary, it is evident that Dr. Teng and ODC apparently suffered a good deal as a result of this contract. Despite their good work, it seems that this contract has exacted a toll of their resources and I am certainly saddened to hear of the problems." (Brandel insinuated to Dr. Teng he could not bear watching Optimal further suffering of funding gaps which were caused by certain upper managers; there was a conserted effort in blocking the funding for this 8(a) minority contract, even though the funds were acquired by Optimal's solo symposium. (Appx.D3, E3))

APPENDIX D1

CONFIRMATION OF COST ADJUDICATION
BY GSFC'S T.O., WISHNA:

TO: GSFC, GREENBELT, MARYLAND
ATTN: SHELDON WISHNA, T.0. (playing C.O., Role)***
VIA: DORIS FLEMING, SMB SPECIALIST

FROM: OPTIMAL DATA CORPORATION,
HUNTSVILLE, AL

PHASE IA MAY TO JUNE 30, 1973,
BUDGET ESTIMATE: $24,600
(APPROXIMATELY 4-MAN EFFORT) a
prerequisite task for IB)

PHASE IB JULY 1 TO SEPTEMBER 30, 1973
BUDGET ESTIMATE: $34,800

PHASE II COMMENCE OCTOBER 1, 1073, COST ESTIMATE BASED ON CPFF CONTRACT, USING THE ESTABLISHED DIRECT LABOR RATE AND OFF-SITE OVERHEAD RATE ELIMINATING OVERTIME LABOR COST AND OTHER "CRASH-PROGRAM" SPECIAL EXPENDITURES. ABOVE ESTIMATES ARE SUBJECT TO SBA 8(A) PROGRAM OFFICIAL'S APPROVAL.

Name & Title of Originator:
LINCOLN TENG, PH.D., DIR., ODC
Originator's Tel. No.
837-1541
Date and Time Prepared:
5-16-73 1:00 P.M.

*** GSFC T.O. played C.O.'s role, over-controlling this 8(a) Minority Contract with unconscionable mistreatment; T.O., Wishna curtailed even the prerequisite task IA which was performed under coercion. Wishna readjudicated IA fund in vain (Appx.D2)

APPENDIX D 2 (SAF.3) GSFC T.O., Wishna's Hand-written Re-adjudication for Task I-A Cost Estimate in Manhours

Month			Oct.			Nov	
Day:	28	5	12	19	26	2	9
Type	Hours						
Project Manager	16	16	16	16	16	16	12
Project Engineer	40	40	40	40	40	40	24
Assoc. Project Engineer	40	40	40	40	40	10	8
Computer Specialist	16	16	16	16	16	16	8
Computer Technician	20	20	20	20	20	20	0
Programmer	24	24	24	24	24	24	0
Data Analyst	40	40	40	40	40	40	8
TOTAL	196	196	196	196	196	166	60

1. Total man-hours additional to complete data reduction and prepare final report: 1.206 Mh which was reduced from 1,350 Mh.
2. Such an evidential adjudication was termed "non-probative" by the BCA Dual-Functioned Judge Dicus.

APPENDIX D 3 (SAF 3)

OPTIMAL'S SOLO SYMPOSIUM AGENDA

TABLE OF CONTENTS

1.0 INTRODUCTION (Teng)
- 1.1 Objectives of PLACE
- ...
- 1.3.2 System Configuration
- 1.4 R.F. Signals

2.0 ANALYSIS OF DATA REDUCTION EXPERIMENT (Samant)
- 2.1 Data Communications
- 2.3 Vehicle Position Determination
- 2.3.5.3 Position Determination, Bell Aero Programs's Deficiencies
- ...
- 2.3.6 Effect of Bias Errors Upon Latitude and Longitude

3.0 CONCLUDING REMARKS (VandeLinde/Samant)
- 3.1 Simulation Results and Analysis
- 3.2 Software Systems Evaluation and Recommendations by Optimal

Optimal Project Personnel:

Dr. Lincoln Teng, Dr. David VandeLinde, Dr. Vivek Samant, Dr. Y. Loh, Jeff Rotman

NASA-GSFC Technical Monitors & Associates

Dr. A. Ghais, S. Wishna, R. Waetjen, W. Allen, J. Christo & D. Brandel

Note: T.O., Wishna coerced Optimal to perform Task I-B along with I-A, a pre-requisite, but deceitfully curtailed I-A fund. Moreover, Wishna, in bad faith, wrote form 533 for I-A fund just to induce Optimal to cram for Optimal Solo Symposium, in funding gaps, to acquire funds, under priority funding commitment while reneged by GSFC in diverting Optimal acquired funds to other uses.

APPENDIX E 1 (SAF. 32A)

RECAPUTILATION OF PROJECT TASKS-FUNDING STATUS--PHASE I & II, 1973-75

Mod Tasks Phase I,II / Funding Status	Cost Adjudicated	Amount Funded	Amount Not-Yet Funded	Comments	Ref.
Phase I-A	$ 24,600		$24,600	Task I-A completed as pre-requisite of I-B, fund for I-A in vain. (Claim V)	SAF 2,3
I-B	34,800	$ 38,800	4,000		
I-A & -B	$ 59,400	$ 38,800	$28,600		
Phase II	$208,258			Ref. Appx. E-2, Tasks Not Yet Funded	SAF 4
Mod. 1		$ 99,610			
Mod. 3		30,564		Optimal completed the tasks under GSFC's devised curtailments as listed in Appx.F showing the tasks progress & funding piece-wisely, belatedly, and many reimbursement in vain. E.G. the new monitor Design ($35,000) as by Dr. Ghais and Brandel who admitted in his letter (Appx.C)	SAF 4
	$208,258	$130,174	$ 78,084		
Optimal's Monitor Design	$ 35,000		$ 35,000		
I & II	$ 59,098	$59,098			
	$361,756	$220,072	$141,684		
II Funding Added Effort Mod 2,4,5,7 & 8 (A.F.1-9)	(GSFC wrongfully called the funds for added effort 'overrun' to deprive fees), Mod2-$15,433, Mod4-$10,651, Mod5-$15,248, Mod7-$ 2,992, Mod8-$ 4,774			As delineated in Appx.F the piecewise belatedly meager funding with torturous modifications, Mod.2,3,4,5,7&8 totalling only $59,898.	
	Total itemized reimbursement is $137,741 vs. adjudicated cost while unfunded $141,684; Optimal's system (only cost $361,756, paid $220,072 in 1973-75) replaced BELL AERO's system (cost $550,000 in 1971-73)				

Appx E 1

APPENDIX E 2 (SAF 32 B)

CATEGORIZED LISTING OF NOT-YET FUNDED TASKS PERFORMED BY OPTIMAL UNDER SUBJECT CONTRACT

Category A: Under CSFC's Task Curtailment Scheme

Task 1:A	Review of Bell Aero's PLACE System with PLACE-Vanguard Experiment and its Documentation
Task 1.5:	Calibration (SAF.4,Appx. F)
Task 1.7:	Data Reduction (SAF.4,Appx. F)
Task 1.8:	Evaluation and Revision (SAF.4,Appx. F)
Task 1.12:	Improve Accuracy of LOCATE (SAF.4,Appx. F)
Task 2.1:	Control Software (SAF.4,Appx. F)
Task 2.5:	Simulation Tests (SAF.4,Appx. F
Task 3.1:	Sumulation Test Plan (SAF.4,Appx. F)
Task 3.2:	Simulation Software (SAF.4,Appx. F)
Task 4.1	Test Plan (SAF.4,Appx. F)
Task 5.1	Other Tests (SAF.4,Appx. F)

Category B: Under GSFC Coercion and False Inducement

Task (i):	OPTIMAL's Sole Symposium for GSFC to acquire Project funding (SAF.3,Appx. D-3)
Task (ii):	Design of OPTIMAL PLACE Software System Monitor design, (as acknoledged in (SAF.19,Appx. C) Adjudication as evidenced in (SAF.3,Appx. F)
Task (iii)	Improving Operating System (SAF.4,Appx. F)
Task (iv)	Recoding and Reprogramming for Minimizing Core Utilization (SAF.4,Appx. D-3)
Task (v):	Training of GSFC T.O., Brandel on OPTIMAL's Real-time Software System Operation and Design--far beyond contract specifications--under misrepresentation (covered-up by Judge Dicus' rewording "Respondent" as "Supporting" Personnel
Note::	Other numerous minor tasks ordered verbally by T.O. were performed with Drs. Samant and Loh's 'obedient' effort until it became known 'the contract will not be extended.'

APPENDIX E 3

GSFC'S PLACE PROJECT FUNDING STATUS (1971-78)
(Data from GSFC's Keefe's documented statement)

Fiscal Period	PLACE Project Funding
1971-1973	$1.7 million (for Bell Aero Systems, Contractor Prior to ODC
1973	$531,000 with only $30,800 for Optimal Task I-B and $24,600 for I-A adjudicated by T.O., Wishna (SAF.2) never funded; all of the rest, about $0.5 Mil spent on Bell Aero's software system while being replaced by Optimal's.
1974	$485,000 - The fund acquired by Optimal's Solo Symposium, GSFC reneged priority funding commitment to Optimal, reducing meager fund of $208,258 to $99,610.
1975	$465,000 - The fund acquired by Optimal Solo Symposium. GSFC's upper managers blocked funding for this minority contractor, Optimal, who received piecewise funds after task performance, totalling $90,000. EG&G received approximately $375,000 while Optimal's proposal at $80,000 was rejected dut to cost.
1976	$510,000 - for EG&G, Inc., a big business firm, after ODC had been ousted from contract's follow-on - an increase of $50,000 over the previous year's funding while exceeding $ 300,000 over that of ODC's contract.
1977	$518,000 - an increase of $8,000 for EG&G over the previous year.
1978	$580,000 - another increase of $62,000 for EG&G over the previous year.
TOTAL:	About $4-million budget for PLACE EXPERIMENT over the eight years, 1971-78.

*All PLACE Project Funds were mainly from Maritime Administration, evidently NASA-GSFC diverted the funds by a massive exploitation of Optimal, an Altruistic Minority Contractor.

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Project Budget and Progress Control Record
Record of Proposed and Completed Tasks
PLACE Software Modifications

TASK Phase II	Proposal 12/73 Org/Rev	Comple-tion Status	Proposal Overrun 4/74	Proposal Add'l 6/74	Comple-tion Status	Overrun 8/74	Sta-tus	Overrun 12/74	Sta-tus
1.OPTIMAL REAL-TIME SOFTWARE SYSTEM DEVELOPMENT									
1.1 Review	x x	yes							
1.2 Control Sft.	x x	no	x		yes				
1.3 Position Deter.	x x	no	x		yes				
1.4 Trilateration	x x	no	x		yes				
1.5 Calibration	x								
1.6 D^3F Link	x			x	yes				
1.7 Data Reduction	x								
1.8 Eval & Revision	x								
1.9 GE-data rec.sft.				x	no				
1.10 MARAD output				x	no				
1.11 NAFEC output				x	no	x	yes		
1.12 Improve Locate								x	yes
2. INTEGRATION									
2.1 Control sft	x								yes
2.2 Sim Control sft	x					x	no		yes
2.3 Test Control sft	x			x	no	x	no		yes
2.4 Locate &Trilat	x					x	yes		yes

2.5 Simulation Test	x								yes
3. DOCUMENTATION OF SIMUATION TESTS									
3.1 Sim.Test Plan	x								
3.2 Sim Software	x								yes
3.3 Sim.Operator's Manual	x								
4. DOCUMENTATION									
4.1 Test Plan	x								
4.2 Documentation	x x	no	x		no	x	no	x	yes
4.3 Operators's Manual	x							x	yes
4.4 Description								x	yes
4.5 Place Exec Doc				x	no				
5. ACCEPTANCE TEST AND SUPPORT									
5.1 Tests	x								yes
5.2 Support &Training	x			x	yes			x	yes

Proposed: $208,258 (all tasks)* $15,433 $34,905 $24,416 $16,125
Approved: revised $99,610 $15,433 $34,364 $20,651 $15,248

*NOTE: The minimized cost $208,258 on App.10 (final approved cost proposal) does not include the tasks not specified here (mainly New System Monitor Design, etc., constructive changes for added effort.

APPENDIX G (SAF 20)

National Aeronautics and Space Administration
Goddard Space Flight Center
Greenbelt, Maryland 20771

Sep 26 1975

Optimal Data Corporation
Attn: Dr. Lincoln Teng
8400 Baltimore Boulevard, Suite 320
College Park, MD 20740

Subject: Evaluation of Proposals Submitted in Response to RFP[1] 5-41218-254 for NASA/HARAD L-Band Experiment Data Reduction

Evaluation of proposals in response to the subject RFP has been completed. Your proposal has been eliminated from competition due to cost factors precluding negotiations with your firm for this procurement. Therefore, a revision of your proposal will not be considered.

The amount of your proposal was found to be significantly higher[2] than that of the firm chosen for negotiations.

You will be notified, in writing, after contract award regarding the identity of the successful proposer and the contract amount.[3] Should you have any questions concerning the foregoing, you may contact L. S. Kelley, Code 289, telephone (301) 982-6394.

signed Joseph J. Gentilini
Contracting Officer

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[1] This RFP Open-Bid is for Optimal's 8(a) Contract Follow-on task, a violation of SBA-SOP.

[2] This rejection was due to cost - a first rejection can only be on technical acceptability, hence violated NASPR.

[3] After Dr. VanderLinde declined 'take-over,' T.O., Brandel pre-fixed EG&G for 'take-over'. EG&G, as Brandel's former employer caused a conflict of interest violation, besides evidence of GSFC's discriminatory treatment of Optimal, an 8(a) Minority Contractor.

APPENDIX II (SAF.30)

Extract of GSFC-SBA Correspondence
(Annotation or Comment)

SBA-Atlanta Regional Office
Attn: John T. Scruggs, 8(a) Program Manager

Subject: Contract NAS5-21941 with SBA/Optimal Data Corporation - SB-424-8(a)-72-C-225

Part 1 GSFC Higgins Letter to SBA (A.F.20-21)

"...Optimal or ODC is a contractor certified for 8(a) assistance. "...technical performance of the contractor under this contract has been entirely satisfactory. However, ODC has been plagued during recent years with financial difficulties, many of which appear to have resulted from such factors as an inability to project costs and thus to propose accurately" (Optimal practices altruistic management; gave notice of $510,000 total fund in the 1973 Funding Meeting) "....Optimal has been unable in many cases to meet payrolls, which has apparently resulted in the loss of several good employees, despite the president's alleged attempt to remedy the situation by a second mortgage on home." (ODC lost no personnel until GSFC cut-off this contract; causing Teng's loss of home ownership.)

"...It would be sad to see a company so obviously competent in its field fail due to lack of proper management practices..."

Signed: James R. Higgins, Contracting Officer

GSFC Higgins' request of DCAA Gallimore for recomputing O/H, defying CPA and DCAA adjusted O/H rate of 145.7% (A.F. 19).

Part 2 GDFC Keefe's Letter to SBA (A.F.50)

"...In view of the above, SBA is requested to sign the attached Contracting Officer's decision in favor of **Goddard Space Flight Center**, in accordance with the Disputes Clause of the contract." (GSFC pressed SBA, the Prime Contractor, Scruggs to ignore the SET auditing report to dispute against its subcontractor, Optimal, in favoe of GSFC, defeating 8(a) program's dutiful edict in SBA-SOP, violating P.L.85-53(a) p.(iii).)

Signed: Robert M. Keefe, Resources Manager

PROLOGUE OF PROLOGUES

Opening Statement: With respect for the principles, basic truths, material facts, and all corroborating evidence, presented in Appellant's Appeal for Reconsideration, Appellant submits a total of nine Prologues, I-A to I-C; II-a to II-C; III-A to III-C to enhance the significance of their contents and to facilitate the perusing and examining of the issues in instant Appeal and to help clarify controversial matters and resolve conflicting allegations, as listed below:

A COMPENDIUM OF PROLOGUES: Re, Optimal's Altruistic Management (App. 102-119)

I-A Chronological Events of OPTIMAL's GSFC PLACE Real-time Software Systems Development **App.102**
I-B Major Features of GSFC-OPTIMAL Contract **App.105**
I-C Unique Virtues of OPTIMAL Altruistic Management and Extraordinary Effort **App.106**
II-A GSFC PLACE Project Funding Status 1971 to 1978 for Bell Aero, OPTIMAL and EG&G, Appx.E3 **App.112**
II-B Recapitulation of Project Tasks-Funding Status From 1973-1975 **App.113**
II-C Categorized Listing of Not-yet Funded Tasks **App.114**
III-A Definitions and Basic Formulae for O/H and G&A Rate Computation **App.115**
III-B Basic Truths Concerning Indirect Cost Segregation for Attaining Equitability (NASPR 15.203) **App.116**
III-C Proof for Meritorious Equitability of OPTIMAL O/H and G&A Rates **App.117**

Overview: This BFAR is logically organized containing Books I, II, III, and IV, of which Book II presented rectification of BCA's Findings of Fact (FOF) and Optimal's Motion for Summary Judgment and recusal of dual-functioned Judge Dicus, in vain. (The recusal was based on allegation of Judge Dicus' dual function.)

Closing Statement:

- **Confucius taught us altruism;**
- **Jesus guides our conscience of justice,**
- **God is the Supreme Judge of all !!!**

APPENDIX J

Optimal's Claim
Re: NAS 5-21941

Appls Ct-Fed Cir. 93-5186
US CFC 760-85C
NASA-BCA NO. 976-8

SAF (SUPPLEMENTARY APPEAL FILE) LISTING WITH ANNOTATIONS

(SAF Tabs not referenced are omitted)

SAF #	TITLE AND ANNOTATIONS	App.#
2	GSFC Fund-Task Confirmation Teleg. Via MSFC: GSFC T.O., Wishna, confirmed his adjudicated cost for tasks IA & IB ($24,600 & $34,800), but IA, a prerequisite order, "Curtailment Scheme". OPTIMAL coerced to work with IB's fund only. C.O.,Wessel added $800 to prove Wishna's deceiving ceiling fund of $30,000. (Appx.D1 & 2)	**App.3**
3	GSFC's Adjudication of Fund and Optimal's Solo Symposium Agenda: GSFC T.O.Wishna's handwritten estimate of $18,029 for Task IA via processing of Form 533, still in vain. (Wishna quit NASA, his handwritten evidence was regarded non-probative by Dicus (Claim V): Optimal's Solo Symposium succeeded in acquiring funds for GSFC who reneged its priority funding commitment to Optimal. This symposium was conducted during funding gap) (Appx. D2 & 3)	**App.5,7,8**
4	GSFC's Adjudication of Phase II for Funds-Tasks/Subtasks: Phase II fund adjudicated by T.O. Brandel @ $208,258 for 5 tasks with a total of 27 subtasks; "Curtailment Scheme"reoccurred, funding only $99,610 to start, precipitating funding gaps intermittantly.	**App.9-10**
5	Project Personnel's Time Records: During funding gaps, the project manhours charged on O/H to carry on the progress; also the unbilled manhours, and billing of direct labor manhours are all recorded for auditing.	**App.11-13**
6*	Voucher 34 & Supporting Documentation: O/H rate computation (1973 & 1974) based on OPTIMAL's Cost Data Coding & Automated Accounting System, IAW	

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* NOTE: This is the only genuine Voucher 34 , not to be confounded by the "non-existent Voucher 34" as falsely alleged in AF.18 by the Dual-Functioned Judge Dicus with ill intent. The 145.7% O/H rate had been adjusted by Auditor Haley (FOF.24) (App.19A, 48, 49). **App.19**

mandatory equitability, segregation of O/H for different operations ($55,141.32). (Claim II). **App.15-19**

7 Record of Payments Depicting Funding Gaps: July-Sep. 1973; Nov. 30, 1973 to Jan. 1974; Feb. 1 to Mar. 9, 1974; June 1974; Sept. 1974; Nov.1974; Feb.1975; Sept.-Dec.1975; Feb.-May 1976; June-Sept. 1976 prior to Appeal. Project progress kept on O/H support **App.21**

9A CCD Device: OPTIMAL's unique instrument to control, monitoring, and pre-auditing of contract cost, if certified, it can help prevent billing errors and/or fraudulent charges from occurring (Appx.M). **App.24**

9B OPTIMAL's Doctrine for Small Business Operations: It's under OPTIMAL's intrinsic practice of altruistic management of minority contracts, working hand-in hand with CCD (Appx.M). **App.24**

10 Voucher 33B: Bill for GSFC's 14-month delayed payment, caused by Keefe's repetitive auditing orders, AF.35-44; still leaving $467 balance by GSFC's arbitrarily applying nonprovisional rate-a breach of contract (Claim I). **App.25**

11 Minutes of DCAA Meeting: SBA designated SET's inquiry into DCAA auditing of subject contract; DCAA responded positively on O/H separation, the 145.7% had undergone DCAA adjustment, per DCAA instruction (APP.48 & 49), which was concealed by DCAA from November 1973 to 1977 when unveiled by ODC. **App.26**

12 Vouchers 35&37: Fully substantiated by records, mainly (Claim III) Dr. Teng's minimum wage charges @ $2.25/hr. as Project Director, denied by Judge. Dicus. **APP.27-29**

13 GSFC Kelley's Peculiar Requirement of OPTIMAL: It's Kelley's non-standard, hand-written tabulation in lieu of OPTIMAL's submissions (APP.11-13), exerting a singularly discriminatory treatment of OPTIMAL. **App.30**

14 Voucher 36 with Substantiative Document: Re Claim IV. 1975 Actual rates: 194% & 21%; DCAA rule, should use 1974 rates 145.7%, and 10.4% for O/H and G&A respectfully. **App.31-32**

15 SBA Designated SET Report: Reaffirmed OPTIMAL's equitable O/H rate of 145.7% (as Auditor Haley adjusted); refuted DCAA's capricious audit report with concealed evidence; the separated WFC contract cost account, showing a deficit of $66,935 vs. DCAA's erroneous figure of $9,025, by using contract ceiling amount. **App.33-36**

APPENDIX J

17 OPTIMAL's Cost Data Coding and Automated Accounting System: The 7-digit code completely identifying project/task and the nature of cost IAW DD Form 663-4, under contract cost standards, ensuring cost segregation per equitability principle (NASPR 15.203). **App.37-38**

18 Project Car Lease: It was with T.O. Wishna's approval deeming necessary to minimize travel cost to and from computer facilities, especially Rosman Station (250 miles)(Voucher 1,and CCD showing pre-auditing approval). The Counsel-Judge Dicus, disapproved such cost. **App.39**

19 T.O. Brandel's Letter: (T.O.Brandel's Memo to C.O., 4/30/75: Brandel's reply (Appx.C) admitting direct dealing with Dr. VandeLinde, as compelled by upper officials' devised impedance of this 8(a) study contract funding (a corroborating discriminatory funding as depicted in Appx.E&F), while highly commending OPTIMAL "a highly original creative team;" praised each key personnel; expressed concern for OPTIMAL's extracting a toll, and, even Teng's second mortgage at stake; acknowledged funding gaps with Optimal's O/H support. **App.40-44**

20 C.O. Gentilini's Letter: Evidence of multi-level violations: (1) NASA Proc. Rule, first rejection can only be on technical acceptability, not on cost; (2) T.O. praised Optimal's project, its follow-on tasks shall prevail of right. Ergo the rejection is evidence of prejudice; (3) 8(a) contract's follow-on tasks are prohibited from opening for bid (SBA-SOP, P.L.85-536); (4) Contract was awarded at a much higher cost to EG&G, T.O.'s former employer -- compounded conflict of interest. (5) Funding discrimination against OPTIMAL is corroborated by PLACE Project Funding Status 1971-78 (Appx.E3). **App.45**

22A CPA's Memo: Re DCAA's instruction for separating O/H cost, OPTIMAL'S implementation of separating O/H was inspected by Auditor Walker with CPA, Thrailkill. **App.48**

22B WFC Pre-Award Audit Report: DCAA's concealed evidence of instruction re separate O/H cost, until uncovered in Sept. 1977 by file searching in DCAA office **App.48**

22C SBA Letter: SBA's dispute based on DCAA's capricious statement in its fraudulent report, "...no time had DCAA ever approved...", contrary to its own instruction (App.48 &49) and defying mandatory equitability. **App.49**

APPENDIX J

23 Stipulation of Training for Support Personnel: T.O. Brandel misrepresented himself as "supporting personnel" for training, while Judge Dicus reworded it as "Respondent personnel", to cover-up Brandel's misrepresentation and the violation in a breach of contract. **App.50**

24 OPTIMAL Director's Income Tax Report: It demonstrated OPTIMAL executive's self-sacrifice in his altruistic management practice for Government Contract. **App.51**

26 OPTIMAL's Coerced Letter & DCAA Walker's Audit Notes: The audit on 1972 NAS 8-26111 showed O/H and G&A deficit of $42,725; OPTIMAL was coerced into declining the claim--evidently a discriminatory treatment of OPTIMAL by DCAA since years ago. **App.54-55**

28 DCAA's Audit Summary Sheet: Optimal's Summary of Cost Accounts by Projects for 1974 based on OPTIMAL's accounting system with cost-segregation structure -- the concrete result of DCAA audit. **App.58**

29 Clause 172, esp. (g): It is the "Supreme" Clause for cost Reimbursement, especially (g), "...notwithstanding any provisions...designating services to be performed by the contractor at his expense or without cost to the Government." Such an evidential clause was disputed by Judge Dicus' tortuous interpretation, "OPTIMAL regarded it a blank check" ---, (MAP.12.22). **App.59**

30 GSFC-SBA Correspondence: Part 1 - by Higgins & Kelley (AF.20&21): Both commended OPTIMAL's technical capability, while criticizing its altruistic management. by Higgins, "lacking proper management", and by Kelley, "inability to project cost". The fact is, projection of $510,000 was given in September 1973, whereas Optimal's cost was only $360,000, of which one third is yet to be reimbursed. (A.F. 20-21)

Part 2 - Keefe's Request for SBA's Decision in Favor of GSFC (AF.50): SBA rendered its biased decision to impede OPTIMAL, defying its own designated SET inquiry report, defeating its dutiful 8(a) program. **App.60-61**

31A Affidavit by SET Vice-President, O'Donnell: Reaffirmed findings of fallacious DCAA's report, and opposed SBA's biased decision to no avail. **App.62**

31B CPA Thrailkill's Memo and Affidavit of SBA's Designated Inquirer: Note the extracted paragraph, GSFC, Keefe dictated to SBA for a decision in GSFC's favor, it is barely

prejudicial and discriminatory. The biased decision was issued by SBA 8(a) Manager, Scruggs. **App.63**

32A Recapitulation of Optimal's Funding Status: A rigorous derivation of all funds/tasks under the classification of Approved, or Adjudicated, Funded, and Not-Yet Funded, and the timely progression of tasks IA, IB, and Phase II, with 5 tasks, 27 subtasks, yielding a grand total balance of $141,684. Each element of the Recapitulation has specific evidence referenced therein, thus the summarized claim of $137,000 (+fees) is in conformation with the cross verifications and the categorized derivations for stipulated tasks along with schedules. Such comprehensive summarized submissions were ignored (Appx.E1). **App.64**

32B Optimal's Not-Yet Funded Tasks Which Were Performed Without Funding During Funding Gaps (Appx.E2) **App.65**

32C GSFC PLACE Project Funding Status 1971-78: As evidenced, there were Discriminatory funding against Optimal's project in 1973, 1974,and 1975; while preferential funding for Bell Aero from 1972-1974, esp. EG&G in 1976, 1977, and 1978. In 1976, EG&G began with $510,000 for take-over of Optimal's follow-on tasks, at a cost far more than that in Optimal's proposal which was illegally rejected on cost (Appx.E3). **App.65**

APPENDIX K

Optimal's Claim
Re: NAS 5-21941

Appls Ct-Fed Cir. 93-5186
US CFC 760-85C
NASA-BCA No. 976-8

A.F. (APPEAL FILE) OF NASA-GSFC LISTING WITH ANNOTATIONS

AF.# TITLE AND ANNOTATIONS

AF.1. Basic Contract (6/22/73) Phase I on Task IB only: T. O. Wishna used curtailment scheme on prerequisite Task IA while coercing Optimal to work on it along with task IB; later T.O. Wishna signed Form 533 for task IA funding, still in vain (App.3,5,7) (Claim V).(Appx.B,D1&2)

AF.2. MOD.1, 1/4/74: In effect, it lifted funding gap, starting Phase II, developing PLACE Real-time Software System. T.O., Brandel adjudicated funds for all tasks/subtasks, but curtailed scheme of $208,000 to $99,610 by same scheme. (App.9).(Appx.F)

AF.3. MOD.2, 3/12/74, Re Trainee Stipulation for Support Personnel: Brandel misrepresented himself as "support personnel" and requested additional training session for himself; BCA Judge Dicus reworded it as "Respondent" to evade misrepresentation in FOF.21 (MAP.12.13).

AF.4. MOD.3, 6/14/74, Re "Supreme" Clause 172 (g): All allowable costs reimbursable (p.iii; APP.59), effects lifting of LOC requirement

AF.5-9. MOD.4, 6/14/74; MOD.5, 10/9/74; MOD.6, 2/6/75; MOD.7, 8/8/75;MOD.8, 4/30/76: All effect lifting of LOC. stipulating certain subtasks/funds/schedules, with meager funds, deceitfully called 'Overrun' to deprive fees, causing intermittent funding gaps (App.9,21) (Appx.E1)

AF.10. Memo by Chief C.O. 2/26/74: December 1973, new T.O., Brandel replacing Wishna who quit without his 533 adjudicated IA funding (AF.1) which was deceitfully used to induce Optimal to work, in funding-gaps, on Optimal's Solo Symposium (Appx.D3), to acquire PLACE funds, in fact with great success (App.7-8)

AF.11. Monthly Progress Report, 7-11-74: Optimal's urgent plea for funding besides verbal requests to T.O.

AF.12. DCAA Review of Time Record, 9/23/74: Auditing of time records provoked Drs. Samant and Loh to react by recording all worked hours showing O/H labor and unbilled hours which, under Dr.Teng's persuasion, were previously not recorded.

APPENDIX K

AF.13. T.O.'s Letter to DCAA, 1/37/75: Optimal charged work hours below reported work hours on records, and even far below actual worked hours (App.7,9,11-13)

AF.14. ODC Letter to Minority Specialist, 3/19/75: Reporting GSFC's mistreatment of Optimal, e.g., T.O., Brandel's dealing directly with Optimal key person, Dr. VandeLinde, for taking over the follow-on tasks -- as he had been compelled by GSFC's devised funding gaps to cripple this 8(a) Contract of Study type.(AF.17,App.40)

AF.15. T.O. Memo to C.O., 4/1/75: Optimal submitted copies of reports per contract stipulation.

AF.16. ODC Letter to C.O., 4/25/75: Submitting copies of report, i.e. Optimal's Real-time Software System Tape.

AF.17. T.O. Brandel's Memo to C.O., 4/30/75: Brandel's reply to AF.14 above, admitting direct dealing with Dr. VandeLinde, as compelled by upper officials' devised impedance of this 8(a) study contract funding (a corroborating discriminatory funding in Appx.E3), while highly commending ODC "a highly original creative team;" praised each key personnel; expressed concern for ODC's extracting a toll, and, even for Teng's second mortgage at stake; acknowledged funding gaps supported by Optimal's O/H (Appx.C).

AF.18. ODC Letter to C.O., 6/19/75: Optimal pleaded for the emergency funding and payment from GSFC on Voucher 33, the delayed partial payments left $467 unpaid by arbitrarily applying non-provisional rate in breach of contract by Keefe and Higgins. (No "Voucher 34" of $17,000 alleged by Dual-Functioned Judge Dicus can be found.(FOF 24)

AF.19. C.O. Letter to ODC, 7/23/75: Supporting data for Voucher 33; GSFC Kelley's request with her own handwritten non-standard tabulation (APP.30) (A discriminatory singular requirement of ODC); Higgin's request of DCAA Gallimore for O/H recomputation-a tortious conspiracy.

AF.20. C.O. Higgins Letter to SBA, 8/4/75: Requesting SBA's assistance to Optimal with praise for Optimal's technical capability, while capriciously criticizing Optimal's lack of proper management; whereas, Optimal's altruistic management surpasses "reasonable", per NASPR

AF.21. GSFC-Kelley's Letter to SBA, 8/14/75: Reported her activities and provided backup documentation. She also,

praised ODC's technical performance, while criticizing its inability to project cost by ignoring ODC's pledge for funds ($510,000) in the September 1973 funding meeting.(A.F. 14 ; MAP.10; et al).

AF.22.ODC Letter to Dr. Vaccaro, 8/29/75: Underneath this letter, GSFC hid copy of DCAA's auditing summary sheets, "Cost Summary by Projects", proving Optimal's Segregated Cost Accounting;also reported GSFC's blacklist.

AF.23.ODC Letter to C.O., 8/29/75: Optimal's pleas for payment, as reiterating claims, under endless auditing.

AF.24.SET Letter & Report, 9/10/75: Report by SET, SBA's designated inquirer, depicting DCAA's and GSFC's faulty conduct, in mistreating Optimal, an 8(a) minority contractor (APP.33-34).

AF.25.ODC Letter to Dr. Vaccaro, 9/12/75: ODC resubmitted Contract Cost Data (CCD), urging payment for Voucher 33. (All CCD sheets were concealed from A.F.)

AF.26.Dr. Vaccaro's Letter to ODC, 9/16/75: ODC was promised by Dr. Vaccaro of a waiving of LOC requirement.

AF.27.C.O. Letter to ODC, 9/17/75: Response to ODC's 8/29/75 plea;GSFC's tactics for delaying Voucher 33 payment.

AF.28.Dr. Vaccaro's Letter to ODC 9/23/75: As requested by Counsel Callan, transmitting file to contracting office, for impeding ODC's reimbursement claim.

AF.29.ODC's Letter to C.O., 10/6/75: ODC's explanation for Voucher 33 costs; GSFC persistently delayed.

AF.30.ODC Letter to Dr. Vaccaro, 10/6/75: Reported the "coincidental" rejection had been proven discriminatory and illegal. NASPR: not allow first reject a proposal by cost; 8(a) contract follow-on tasks cannot be open for bid, IAW SBA-SOP (Citations D3 & 5, p.(vi),APP.45).

AF.31.Dr. Vaccaro's Letter to ODC, 10/15/75: Forwarding to GSFC'S contracting office, waiving LOC notice.

AF.32.DCAA Audit, 10/21/75: A proven fraudulent report (APP.48,49,63) containing a vagarious DCAA Notice No.1, undelivered to Optimal, which DCAA wrote as 'ACO's determination', whereas C.O., Higgins, read it to Teng as 'DCAA's determination'.(Appx.H)

AF.33.SBA Letter, 11/28/75: SBA designated SET inquiry of DCAA's Audit Report, proven capricious and erroneous

in its recomputation of a composite O/H rate, severely inequitable. (APP.48,49,63, NEV.3, Appx.N3).

AF.34. ODC Letter to GSFC Director Clark, 12/15/75: Optimal's desperate plea for payment, reiteration of claims.

* AF.35. Mr. Keefe's Memo to C.O. Shorter, 1/29/76: Expanded delaying tactics. Keefe ordered repetitive auditing and requested submission of cost data for the umpteenth time, re meeting of 1/22/76. (Repetitive auditing is illegal, Clause 29 & 153)....

AF.36. ODC Letter to Keefe, 1/29/76: Confirming agreement of the 1/22/76 meeting, submission of Voucher 33 ($8,233) and Voucher 34 ($55,141) and supporting documents, (App.14-19) and. CCD, time cards, etc.

AF.37. ODC Letter to Keefe, 2/25/76: ODC reiterated explanations with cost data for Voucher 33, urging

* AF.38. Keefe's Letter to Price Analyst, Strong, 3/5/76: J. Chovan ordered re-audit again, (expanding delaying tactics)....

* AF.39. Keefe's Letter to ODC, 3/5/76: Requesting additional information from ODC and cooperation with J. Chovan, umpteenth audit....

* AF.40. ODC Letter to Keefe, 3/10/76: Concerning audit by Chovan....

* AF.41. Keefe Letter to ODC, 3/11/76: Requesting time cards and submissions were audited by DCAA (in Huntsville and Greenbelt) also, pre-audited CCD by T.O....

* AF.42. ODC Letter to Keefe,3/18/76: Response to audit by Chovan....

* AF.43. ODC Letter to Chovan, 3/18/76: Redundant submissions of data for audit, a mis-treatment of Optimal, an 8(a) minority contractor. In fact, Optimal's Contract Cost Data (CCD) device was periodically submitted for pre-auditing, but GFCS concealed from Appeal File....

* AF.44. Chovan's Letter to C.O., 3/25/76: Auditor Chovan's audit report finally ending Keefe's repetitive auditing however, ODC's business had already been ruined....

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* Evidence of excessively repetitive auditing on subject 8(a) Minority Contract; these audit orders were given by GSFC's T.O., Higgins and Keefe, as late as 10 month elapsed after DCAA;s Audit Summary Sheet (SAF.28, Appx.J-3)

APPENDIX K

AF.45. Keefe's Letter to ODC, 4/12/76: Another partial payment still leaving a balance of $467 in Claim I for not using the provisional O/H rate, in a breach of contract.

AF.46. Honorable Jones' Letter, 4/15/76: Congressman Jones' letter to NASA re approved payment for Mod.#8, urging payment to ODC, Also enclosed SET report, critical of DCAA's misconduct.

AF.47. ODC TWX to Keefe, 4/21/76: ODC's request for payments which were delayed for 14 months, forcing a demise of ODC's business.

AF.48. NASA Asst. Adm. Allen's letter, 4/23/76: Response to Congressman Jones' letter of 4/15/76.

AF.49. Congressman Jones' Letter to NASA, 6/15/76: Forwarding Optimal's report of grievance on subject contract.

AF.50. Keefe's Letter to SBA, 6/18/76: GSFC's letter asking SBA decision be made in favor of GSFC, even in defying its own designated SET inquiry report.

AF.51. SBA Letter to ODC, 7/1/76: Defying SET's recommendation, SBA re-ordered the unjust decision against Optimal, an 8(a) contractor, by its 8(a) Program Manager, J. Scruggs (who was under Senator Chiles' investigation for wrong doings, i.e., having his son-in-law simultaneously on several 8(a) contractors' payrolls).

AF.52. SBA Letter to Payne, 8/5/76:Forwarding Notice of Appeal.

AF.53. Attorney Malyzsek's Letter to Keefe: Attorney Malyzsek, ODC's legal advisor, appealed for resolving case.

AF.54. Keefe's Letter to Malyzsek:Refused Reconsideration.

AF.55. C.O. Shorter's Memo to BCA, 9/7/76: GSFC's Appeal File (AF) submission, concealing key documentary evidence, e.g. minutes of GSFC's April-June 1975 meetings on subject contract, of which the Dual-Functioned GSFC Counsel and BCA Judge Dicus participated in the second meeting (NEV. 1&2, Appx.N1 & N2), and repulsed resolution for Optimal's complaint. Optimal's CCDs were also concealed from Appeal File because the CCDs can prove pre-auditing approvals by T.O. and C.O. on the reported cost incurrences.

APPENDIX L
Excerpts Of BCA's Dual-Functioned Judge Dicus' Decision And CFC Judge Hodges' Opinion

PART I, NASA-BCA Dual-Functioned Judge Dicus' Decision

MAP 12.2 Decision Summary on Appeal for Consideration

1.1 "Cost Principles - Allocation of Indirect Costs-Accounting Method Changed-Change from One to Two Overhead Pools."

1.2 "They noted that, while facts beyond the record might well explain the contractor's financial catastrophe, the record could lead to no new conclusions, and HARDSHIP ITSELF IS NOT A BASIS FOR RELIEF. Therefore, the board affirmed its prior decision that is was not permissible for the contractor to CHANGE HIS ACCOUNTING METHOD."

MAP 12.2 (3) BCA Decisions Key-note

1.3 "... have reviewed Appellant's submission, and find that our decision is addressed therein on a FINDING-BY-FINDING, PAGE BY PAGE BASIS."

MAP 12.6 & 12.7 BCA Decision Summary Highlights

1.4.1. "Cost Principles-Allocation of Indirect Costs-Accounting Method Changed-CHANGE FROM ONE TO TWO OVERHEAD POOLS"

1.4.2. "Cost Principles - Limitation of Cost Clause-Cost Overrun-Timely Notice"

1.4.3. "Cost Principles-Limitation of Costs Clause-Provisional Overhead Rate Exceeded-Determination of Final Rate"

1.4.4 "Changes-Compensability-SERVICES, REPAIRS, MAINTENANCE CONTRACTS-Contract Modification 'The contractor had POOR PROOF of his alleged costs and very little evidence that there was any additional work. NO SEPARATE PROPOSAL for performing the extra work was EVER SUBMITTED by the contractor during the contract modification negotiations. His POOR RECORDS made it impossible to tell if the alleged work was covered by any of the modifications.'"

APPENDIX L
MAP.12.7 FOF 2

1.4.5 "The basic contract has several provisions dealing with the tripartite contractual arrangement. As between SBA and NASA/GSFC, it is provided:....."

1.4.6 "In light of the purpose for which award is herein authorized, i.e. to assist Optimal Data Corporation toward the achievement of viability:..."

MAP 12.11 - FOF 15

1.5.1 "In a letter to Dr. Teng dated November 25, 1976, ODC's accountant, Mr. Warren Thrailkill, discussed a post-contract award with Mr. Walker".... ....

1.5.2 "No mention is made of separate overhead pools, just the separation of overhead costs for identification."

MAP 12.12 - FOF 18

1.6.0 " The Board finds, based upon Findings of Fact that:

1.6.1 The DCAA auditor suggested use of a separate pool for overhead costs so as to develop an overhead rate to be applied only to the WFC contract prior to contract award."

1.6.2 Notwithstanding that suggestion, the WFC contract was negotiated using the single, company-wide overhead rate based upon a single, company-wide pool."

1.6.3 The pre-contract establishment of a separate pool for the WFC contract would have resulted in application of a lower overhead rate than the 42.2% rate used for negotiation of the WFC contract, and therefore, a lower contract price."

1.6.4 While Appellant or its accounting advisors may have misunderstood the DCAA suggestion there is no evidence that Appellant was ever advised by Respondent or DCAA after award of the Wallops contract to establish a separate overhead pool for that contract, or that a separate pool was established during contract performance."

1.6.5 The Board finds that, if Appellant misunderstood the DCAA suggestion, there is no evidence of conduct on Respondent's part which would place responsibility for that misunderstanding upon Respondent."

MAP.12.13 FOF 21

1.7 "Modification 5, dated February 6, 1975, was a combination of overrun on the contract documentation requirements and an increase in the scope of work to include training of Respondent's personnel in use of the

contract software, and a task called geodetic co-ordinate conversion."

MAP 12.13 FOF 24

1.8.1 "On June 19, 1975, Appellant submitted a letter to the contracting officer asking for additional cost reimbursement in the amount of $8,233.31 for Voucher 33 and $17,020.84 for Voucher 34. The basis for Voucher 33 is a direct labor overrun.."

1.8.2 "With regard to **Voucher 34**, Appellant claimed overhead costs in excess of billing rates in the amount of $17,020.84 (Appeal File, Tab 18)"

MAP 12.14 FOF 28

1.9 "Negotiations involving the remaining costs under Voucher 33 continued for an extended period (Appeal File).

MAP 12.14 -15 FOF 32

1.10 "Appellant's established procedure was to use direct labor as the base for computation of overhead. The formula is stated by Appellant as follows: .....This is consistent with DCAA's interpretation of Appellant's method of calculating overhead (Appeal File, Tab 32).

1.11 "With respect to G&A, however, Appellant states the formula thusly: .....DCAA found this formula to be inconsistent with Appellant's accounting system in that overhead cost should not have been included in the base. Since this results in a higher G&A rate, and thus is to the benefit of Appellant, we accept the DCAA interpretation of the appropriate calculation of G&A (Appeal File, Tab 32)."

MAP 12.17 FOF 40, 41, 58

1.12 "Appellant subsequently revised its claim under Voucher 34 to $55,151.32 as follows:..."

1.13 "In the continuing negotiation of Voucher 33, Respondent asked for additional documentation to explain the 870 hours which appeared to be charged for one employee in an 8 week period"

1.14 "Applicable NASA Procurement Regulation Cost Principles as follows..." (NASPR 15.203, over 3-page long)

MAP 12.22

1.15 "Throughout Appellant's arguments on all five claims, paragraph (g) of the Allowable Cost, Fixed Fee and Payment clause is cited as a basis for recovery..."

APPENDIX L

1.16 "Appellant's reliance upon this paragraph is misplaced. It is not, as Appellant submits a kind of blank check for allowability and reimbursement of costs under a cost-type contract. The paragraph first requires that a cost incurred must otherwise constitute an allowable cost under the clause before it is to be considered. No contract provisions are at issue. The provisions of paragraph (g) simply do not apply here.

MAP 12.30

1.17 Summary of Decision

1) 'Complaints I and II - The board find the retroactive change to two overhead pools to be unreasonable and inequitable, and thus in violation of NASPR, Parag 15. Complaints I and II are denied. The Contracting Officer's Final Decision is sustained, except as the amount overbilled ($19,063) may be amended under Complaint IV."

2) "Complaint III - The Board finds no evidence to substantiate the incurrence of the costs alleged, and non-concurrence with the LOC clause notice provision, even if incurrence had been proved. Complaint III is denied."

3) "Complaint IV - The Board finds that the 1976 overhead and G&A rates are provisional. Complaint IV is remanded to the contracting officer for determination of final overhead and G&A raise for 1975 only.

4) "Compiling V - The board finds no probative evidence that the alleged overrun costs were incurred, or if incurred, were the result of a constructive change order, or were not merged into other overruns funded subsequent thereto. Complaint V is denied.

5) "Complaint IV is REMANDED to the contracting officer.

"The appeal is otherwise DENIED"

PART II, CFC Judge Hodges' Opinion

MAP 9 Fraud and Bad Faith

2.0 "Plaintiff's argument is that the administrative judge is biased because he had been an employee of NASA. Claims of fraud and bad faith pervade all of plaintiff's pleadings."

MAP 10 Complaint 1

2.1 "Finding of Fact No. 32 of the Board is a determination that plaintiff's formula for calculating the G&A rate was

incorrect. The finding is that overhead casts were included as the G&A formula, so that overhead was recovered twice."

MAP.10 Complaint 2

2.2 "Finding of Fact No. 18 is based upon Findings of Fact Nos. 9-17."

2.2.2 "Plaintiff's challenge to this finding does not show why Finding of Fact No. 18 is not supported by substantial evidence. The Board's finding is supported by substantial evidence in the record.

MAP.10 and 11 Complaint 3

2.3.1 Re: LOC "In the September funding meeting, Dr. Teng emphatically gave notice to GSFC for a minimum funding of $15,000 for a 3-year period while ODC was pledging for cost consciousness. The December 5, 1973 letter, and many more..."

2.3.2 "Plaintiff refers to letters in the record for support of the notice under the LOC clause. Yet, the letters plaintiff cites are all dated after the completion of the work under the contract. The LOC clause required notice prior to the overrun. There is no support in the record for alleged earlier letters."

MAP 11 Complaint 4

2.4 Re: Remanding of Claim IV. "Plaintiff does not challenge the finds, but attacks what it thinks the contracting officer's decision will be. This is not before the court."

MAP 11 Complaint 5

2.5. "Plaintiff does not attack any of the specific findings of fact used to reach this conclusion, nor does it cite to the record for support of its allegation."

MAP 11 Complaint 5 - Conclusion of Law

2.6 "The Board noted that plaintiff's version of this clause would give plaintiff a "kind of blank check for allowability and reimbursement of costs under a cost-type contract." We agree with the Board's interpretation."

APPENDIX M (SAF 9A)

OPTIMAL'S CONTRACT COST DATA (CCD) - A Unique Cost Reporting Instrument

COST ITEMS	PAYEE	CHECK #	AMOUNT	REMARKS
No.I Direct Material				
No.2 Material Overhead (% of No.1)				
No. 3 Direct Labor				
No. 4 Labor Overhead (% of No. 3)				
No. 5 Special Testing				
No. 6 Special Equip				
No. 7 Travel				
No. 8 Consultants				
No. 9 Other Direct Costs				
No.10 Total Direct Cost & Overhead				
No.11 General & Administrative Expenses (% of Nos. 10)				Optimal's Altruistic Formula = (% of No.3)
No.12 Royalties or Fees				
TOTAL ESTIMATED COST				

NOTE: 1) CCD submitted along with each voucher and can do monitoring, control, & preaudit of contract cost. If certified by supervisor, this will effectively prevent mis-charges, erroneous or fraudulent billings.

2) CCD cost itemization is completely based on Form DD633/533.

3) SAF 9B, Optimal's Doctrine for Small Business Operations contains a 10-step Implementation of Altruistic Management.

Appx.M

APPENDIX N1 (NEV.1)

AFFIDAVIT OF AUTHUR WOLTER

My name is Arthur Wolter and I live at 700 SW 17 Street, Boca Raton, FL 33486. My telephone number is (407)394-8414.

I was an employee of the Goddard Space Flight Center (GSFC), NASA, located in Greenbelt, MD. During the period involving the Optimal Data Corporation (ODC) contract with GSFC, my position was that of Head of the Small Minority Business 8(a) program for the Center by appointment from Dr. James Clark, Center Director.

By law, and in accordance with duties assigned, I intervened on behalf of Dr. Lincoln Teng, Director of ODC, in receipt of his letter of complaint dated March 19, 1975, with the Chief of Procurement, Mr. Clifford Shorter, to call a meeting of Technical and Procurement personnel involved with the ODC 8(a) contract. This meeting was called to resolve questions concerning contract costs and possible breach of ethics.

The above resulted in two meetings that included parties to the contract and Legal Counsel as well as myself. The first meeting was attended by all parties to include Attorney William Richardson, Assistant Chief of the Legal Department. Following this meeting, Attorney Carroll Dicus was assigned this action and was present at the second meeting.

To the best of my knowledge, Attorney continued in the assignment until he was appointed a Hearing Examiner for NASA-Board of Contract Appeals.

Arthur Wolter Jr. Esq.

Susan K. Evans, Notary Public, P.G.Ct., MD. 6/14/91

APPENDIX N2 (NEV.2)

AFFIDAVIT

(Amendment to June 14, 1991 Affidavit)

To Whom It May Concern:

My name is Arthur Wolter, Jr. I live at 9129 Tulip Grove Road, Gaithersburg, Maryland 20879. My telephone number is (301)926-7451.

At the time of the action referred to here (March 1975), I was the Minority Business Specialist by appointment of the Director for the Goddard Space Flight Center (GSFC).

Pursuant to Dr. Lincoln Tent's request as head of Optimal Data Corporation, a minority 8(a) contractor, I am submitting this affidavit. The subject of this affidavit is Dr. Teng's complaint that GSFC was in breach of contract as it related to unpaid consideration, as well as manipulation of his key personnel, e.g. Dr. VandeLinde, by GSFC Technical Officer, Brandel, and other conduct in breach of ethics.

I called the Chief of Procurement, Mr. Clifford Shorter, to arrange for a meeting of all personnel involved with the contract and others deemed necessary to resolve the issues. Two meetings were held, and, in accordance with GSFC policy, all parties present were required to sign a register and note their positions. The register was dated with a subject heading and made a part of the minutes to follow.

The following parties were present at both meetings: Clifford Shorter, Robert Keefe, Assistant Procurement Chief, and the Branch Head, Contracting Officer and negotiator, Business Representative and Technical Representative. However, William Richardson, Legal Counsel, was present only at the first meeting and replaced by Attorney Dicus at the second meeting. I had called Attorney Richardson after the first meeting and he advised that Attorney Dicus had been assigned the action and that I should discuss the matter with him.

After the second meeting, I made a special effort to call Attorney Dicus to pursue his consideration for resolving Optimal's complaint. Attorney Dicus became rather evasive and disagreed with my suggestion regarding the seriousness of the complaint.To the best of my recollection, I had no further discussions with Attorney Dicus regarding this matter or any other matter.

_____

Arthur Wolter, Jr., Esq.

_____

Susan K. Evans,Notary Public, P.G.Ct.,MD. 05/29/92

APPENDIX N3 (NEV.3)
CPA,WARREN M. THRAILKILL Memo
2509 Newby Road, S.W.
Huntsville, AL 35805

August 22, 1991

Memo: DCAA's Suggestion/Discussion for Separating On-Site Project O/H from Off-Site Operations O/H Pool and the DCAA Adjusted Equitable O/H Rate of 145.7%

This memorandum is another supplement to the one dated Nov. 25, 1975 and subsequent to that one dated June 18, 1979.

Our memorandum of Nov. 25, 1975 explained our action re Optimal Data Corporation's overhead separation. This was a result of a conference with DCAA's auditors and not from any written instructions such as contained in DCAA Audit Report of Oct., 1973 and not issued to Optimal. In June 1975, DCAA's audit was conducted in close coordination with our office and concluded at Auditor Haley's direction with "Summary of Cost By Projects" -- depicting clearly Optimal's segregated cost accounts. (Optimal's Cost Data Code and CCD Device)

In Nov. 1973, DCAA Auditor Walker visited our office specifically for the implementation of DCAA's instruction on overhead separation. (Such separation is mandatory)

The memorandum of June 18, 1979 addressed our adjustment of overhead rate due to an allocation of payroll taxes and group insurance costs, as suggested by Auditor Haley. This resulted in a final overhead rate of 145.7% for year 1974 which was submitted in Aug. 1975 to DCAA. In the meeting of Aug. 29, 1075 mentioned in my memorandum, no question was ever raised by DCAA in response to SBA's inquirer, O'Donnell, regarding the DCAA's adjusted overhead rate of 145.7%. (Haley's hand-marked adjustments in SAF6.(Appx.J-1))

I have no record or recollection of knowing this overhead being recomputed to be 50.2% composite overhead rate by the DCAA Auditor Haley. I, as Optimal's CPA, should have been consulted and Optimal's complete cost data in our office should have been used.

Optimal's documentation of events and its cost data refelct its sincerity of presenting the events and its unusual cost consciousness in the contract performance for which technical officers highly praised, as record disclosed, thus Optimal's reimbursement is long over-due.

This is being recorded as further reflections on events outlined in previous two memorandums from our office.

Warren M. Thrailkill, CPA

Optimal's Petition
Re:NAS 5-21941

USSC:_____
Apls.Ct-Fed.93-5168
US CL. CT. #760-85C
NASA-BCA NO 976-8

PETITION FOR WRIT OF CERTIORARI
CERTIFICATION OF SERVICE

This is to certify that in compliance with the directive of June 12, 1994 from the USSC Clerk's Office, the undersigned, on this date, 4th day of September 1994 mailed (1) copy of the foregoing Petition with Appendix to the following:

1. Office of the Solicitor General
   Department of Justice
   Washington D.C. 20530

2. Joseph A. Kijewski, Esq.
   Commercial Litigation Branch
   Civil Division
   Department of Justice
   550 - 11th Street, N.W.
   Washington, D.C. 20530
   Tel: (202) 307-0277

Signed _____

Chris J. Christie, Esquire
Counsel for Petitioner,
Optimal Data Corporation
12110 Cedarbrook Lane
Laurel, MD 10708
Tel/FAX 301-983-3551